117824

Matter - Kaleby 6 6 77

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

21151

FILE: B-205877 DATE: March 16, 1982

MATTER OF: Refunds by Department of Interior of Excess Royalty Payments

DIGEST: 1. Overpayments made under royalty oil sales contracts between the Government and small refiners, under section 27 of the Outer Continental Shelf Lands Act, as amended, may not be refunded under section 10 of the Act, because they were not covered into the Treasury under section 9 of the Act. Such payments were not made "under any lease on the Outer Continental Shelf" as required in section 9, even though the oil being sold was extracted pursuant to leases issued under that section. Refunds from the United States Treasury under section 10 may only be made for funds covered into the Treasury under section 9.

2. Royalty payments collected by the Department of the Interior under section 27 of the Outer Continental Shelf Lands Act, as amended, may be refunded from the permanent appropriation created by 31 U.S.C. § 725g-1 (1976) upon a determination by the Department of the Interior that payments exceeded the amount due the Government, if otherwise proper. Refunds may be made from that appropriation when funds were erroneously covered into the Treasury as miscellaneous receipts, and their refund is not properly chargeable to some other appropriation.

This decision is in response to a request from the Solicitor of the Department of the Interior. The Solicitor asks whether Interior may properly use the permanent appropriation contained in 31 U.S.C. § 725g-1 (1976) to effect the refund of overpayments made by refiners purchasing Federal royalty oil produced from the Outer Continental Shelf. For the reasons indicated below, we conclude that the permanent appropriation is available for these refunds if Interior determines that refunds are, in fact, due. This decision, however, does not rule on the propriety of the refund claims themselves.

In accordance with the provisions of section 8 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. § 1337 (Supp III 1980), Interior (through the U.S. Geological Survey) leases to private firms the right to extract crude oil from the Outer Continental Shelf. Under section 27 of the Act, as amended, 43 U.S.C. § 1353(b) (Supp III 1980), Interior takes from lessees some of the oil extracted under these leases as payment in kind. That oil is sold to small refiners in order to assure them of a constant supply, in times of shortage. The Solicitor advises us that Interior routinely bills the small

refiners at the same price for which the lessees are selling their portions of the oil extracted from these leases. The Solicitor's question relates to Interior's sale of some of the crude oil which was extracted under lease OCS-G2115. According to the Solicitor, during the term of that lease, both the lessee's sale and Interior's sale of that crude oil were generally subject to the Department of Energy's price controls. See generally 10 C.F.R. Part 212 (1981).

Beginning in July 1980, the lessee under lease OCS-G2115 received a limited exemption from the price controls because it had begun a "tertiary recovery project" to increase the production of oil from this lease. See 10 C.F.R. § 212.78 (1981). Under this exemption, the lessee was permitted to sell at market price enough oil to enable it to recover the extra expenses which it incurred from operation of the tertiary project. When Interior learned that the lessee was receiving the market price for part of the oil which it was selling, it billed two unnamed refiners at the uncontrolled market price for the oil which it was selling to them. The refiners paid the additional amounts demanded by Interior, but filed administrative appeals contesting Interior's right to bill them at the market price, rather than the controlled price.

The Solicitor states that, under DOE Interpretation 1980-7, 45 Fed. Reg. 33951, 33952 (1980), it was determined that Interior did not qualify under 10 C.F.R. § 212.78 to receive the market price for the Government's sale of the oil produced from this lease. Therefore, the Solicitor concludes that Interior collected approximately $600,000 more than it was entitled to receive. Interior wishes to return this excess, but states that the revenues from this lease, including the overcharge, were deposited into the Treasury under 31 U.S.C. § 484 (1976).

Ordinarily, Interior would simply credit overpayments against the refiners' future payments under their royalty oil contracts with the Government. However, since both refiners have canceled their contracts, crediting is impossible. For this reason, Interior wishes to refund these overpayments to the refiners. The Solicitor has determined that such refunds cannot be made under the authority contained in section 10 of the Act, 43 U.S.C. § 1339 (1976). See Solicitor's Memorandum M36942, Department of the Interior, December 15, 1981, pp. 5-6. The Solicitor requests our opinion as to whether Interior may use the appropriation in 31 U.S.C. § 725q-1 to effect these refunds. In this regard, the Solicitor states that the money was received in violation of a Department of Energy regulation, was covered into the Treasury under 31 U.S.C. § 484, and, to his knowledge, is not chargeable to any other appropriation.

We agree with the Solicitor that sections 9 and 10 of the Act are not applicable to this case. Section 9 requires "[a]ll rentals, royalties and other sums paid * * * under any lease on the outer Continental Shelf * * *" to be deposited in the Treasury and credited to

miscellaneous receipts, 43 U.S.C. § 1338. Refunds are provided for in section 10 which states:

> "* * *[W]hen it appears * * * that any person has made a payment to the United States in connection with any lease under this Act in excess of the amount he was lawfully required to pay, such excess shall be repaid * * * out of any moneys in the special account established under section 9 of this Act * * *." 43 U.S.C. § 1339(b).

The Solicitor is correct that section 9 limits its application to the deposit of money obtained by the Government "under any lease" on the Outer Continental Shelf. While the oil sold by Interior to small refiners pursuant to section 27(b) of the Act is extracted pursuant to leases on the Outer Continental Shelf, Interior's resale of that oil to small refiners is effected under the royalty oil contracts between Interior and the small refiners, not under the off-shore drilling leases. Consequently, the royalties collected, including the overpayments, were not "under any lease" and could not have been covered into the Treasury under section 9.

Similarly, in our opinion section 10 does not authorize the refund of overpayments made under the royalty oil contracts between Interior and the small refiners because they were not made "in connection with any lease under this Act." Payments made under the royalty oil contracts are separate and unrelated to the off-shore leases. The provision in section 10, to the effect that refunds authorized by that section are to be paid from the account established in section 9, lends further support to the conclusion that the provisions of sections 9 and 10 are intended to be coextensive in scope. Therefore, if these royalties could not be covered into the Treasury under section 9, as we have concluded, then the overpayments may not be refunded under section 10.

We have recently restated the rule for determining the proper appropriation available for refund of money erroneously collected, as follows:

> "* * *[W]hen moneys are erroneously deposited into the Treasury as miscellaneous receipts, the appropriation 'Refund of money erroneously received and covered' is to be used to refund these moneys unless there is a specific appropriation available for such refunds." 61 Comp. Gen. ___ (B-203446, January 28, 1982).

In this case, as we have indicated, the royalties collected by Interior, including the overcharges, were deposited into the Treasury as miscellaneous receipts under 31 U.S.C. § 484 (1976). Moreover, we agree with the Solicitor that there is no specific appropriation

available to pay these refunds. Therefore, the appropriation created by 31 U.S.C. § 725q-1 entitled "Refund of moneys erroneously received and covered" may be used to refund the overcharges collected from the refiners if such refund is otherwise proper.

for Milton J. Socolar
Comptroller General
of the United States