

DECISION

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

*Martin Kolsky
GGMU*

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FILE: B-215128

DATE: December 14, 1984

MATTER OF: Offset under statutes other than Debt
Collection Act of 1982

DIGEST:

1. Sections 5 and 10 of the Debt Collection Act of 1982, codified at 5 U.S.C. § 5514, and 31 U.S.C. § 3716 (1982), respectively, provide generalized authority to take administrative offset to collect debts owed to the United States. Their passage did not impliedly repeal 5 U.S.C. §§ 5522, 5705, or 5724 (1982), or other similar preexisting statutes which authorize offset in particular situations. This is because a statute dealing with a narrow, precise, and specific subject is not submerged or impliedly repealed by a later-enacted statute covering a more generalized spectrum, unless those statutes are completely irreconcilable.
2. Section 5 of the Debt Collection Act of 1982, 5 U.S.C. § 5514, as implemented in 49 Fed. Reg. 27470-75 (1984) (to be codified in 5 C.F.R. §§ 550.1101 through 550.1106), authorizes and specifies the procedures that govern all salary offsets which are not expressly authorized or required by other more specific statutes (such as 5 U.S.C. §§ 5522, 5705, and 5724). Any procedures not specified in that statute and its implementing regulations should be consistent with the provisions of the Federal Claims Collection Standards, 49 Fed. Reg. 8898-8905 (1984) (to be codified in 4 C.F.R. ch. II).
3. Except as provided in section 101.4 of the Federal Claims Collection Standards (FCCS), when taking administrative offset under 5 U.S.C. §§ 5522, 5705, or 5724, or other similar statutes, or the common law, agencies should follow the procedures specified in section 10 of the Debt Collection Act of 1982, 31 U.S.C. § 3716 (1982), as implemented by section 102.3 of the FCCS, 49 Fed. Reg. 8889, 8898-99 (1984) (to be codified in 4 C.F.R. ch. II).

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The Chief Counsel of the Internal Revenue Service has requested our opinion on the procedures to be followed when collecting debts by administrative offset under statutory authority other than that contained in the Debt Collection Act of 1982, Pub. L. No. 97-365, 96 Stat. 1749. In particular, the Chief Counsel inquired about administrative offset authority contained in 5 U.S.C. §§ 5522, 5705, and 5724. The question arises because sections 5 and 10 of the Debt Collection Act of 1982 (codified at 5 U.S.C. § 5514 and 31 U.S.C. § 3716 (1982), respectively) mandate specific, yet differing, offset procedures. Most other statutes, including the three cited above, do not address what, if any, procedures must be followed when taking offset under their authority.

For the reasons given below, we conclude that when effecting offset under a statute which does not provide its own procedures, including 5 U.S.C. §§ 5522, 5705, and 5724, agencies should comply with the procedures prescribed by section 10 of the Debt Collection Act of 1982, as implemented by section 102.3 of the Federal Claims Collection Standards (FCCS), 4 C.F.R. ch. II, as amended, 49 Fed. Reg. 8889, 8898-99 (Mar. 9, 1984).

The Debt Collection Act of 1982

According to its legislative history, the Debt Collection Act of 1982 (DCA) was intended to "put some teeth into Federal [debt] collection efforts" by giving the Government "the tools it needs to collect those debts, while safeguarding the legitimate rights of privacy and due process of debtors." 128 Cong. Rec. S12328 (daily ed. Sept. 27, 1982) (remarks of Sen. Percy). Two sections of the DCA, sections 5 and 10, were concerned with the collection of debts by means of setoff. Section 5 amended 5 U.S.C. § 5514, which authorizes agencies to take offset against the salaries of Federal employees and military members. Previously, section 5514 had been limited to erroneous payments, and did not prescribe any procedural protections.

Section 5 expanded section 5514 by authorizing salary offset to collect "[any] debts which the United States is entitled to be repaid." 5 U.S.C. § 5514(a)(1). According to the legislative history, Congress intended this change to provide the Government with the authority to take salary offset in order to collect "general debts"--that is, any debts owed to the United States. See, e.g., S. Rep. No. 378, 97th Cong., 2d Sess. 10-12, 22-24 (1982). At the

same time, section 5 imposed a number of procedural requirements upon salary offsets undertaken pursuant to section 5514. 5 U.S.C. § 5514(a)(2). It was explained that "[I]t is imperative * * * that Federal employees be provided their full due process rights in any setoff procedure. Accordingly, [section 5] provides for a series of steps that must be taken prior to any setoff [under it]." S. Rep. No. 378, supra, at 12. The Office of Personnel Management (OPM) has promulgated regulations to implement section 5. 49 Fed. Reg. 27470 (July 3, 1984), to be codified at 5 C.F.R. Part 550, Subpart K (hereinafter, "Subpart K").

In addition to section 5, the DCA also addressed administrative offset authority in section 10. This latter section amended the Federal Claims Collection Act of 1966, codified in 31 U.S.C. ch. 37 (1982), to provide that "[a]fter trying to collect [any] claim from a person under [the provisions of the original 1966 act], the head of an executive or legislative agency may collect the claim by administrative offset." 31 U.S.C. § 3716(a).^{1/} Like section 5, section 10 prescribes certain procedural provisions that are required to be taken prior to offset. Id. However, the procedures in section 10 differ from those in section 5. Compare 31 U.S.C. § 3716(c) with 5 U.S.C. § 5514(a)(2). Section 10 has been implemented by GAO and the Department of Justice in amendments to sections 102.3 and 102.4 of the FCCS, 49 Fed. Reg. at 8898-8899.

Preexisting Offset Statutes

Prior to the enactment of the DCA, many other statutes had been enacted which authorized or required offset against

^{1/} The terms "debt" and "claim" have been interpreted to be "synonymous and interchangeable" terms that refer to "any amount of money or property * * * owed to the United States." FCCS § 101.2(a), 49 Fed. Reg. at 8896. Cf. 31 U.S.C. § 3701(b).

salary or other amounts to be paid by the United States.^{2/} Among those statutes are the three cited by IRS. Under the first, 5 U.S.C. § 5522(a), setoff is authorized to recoup advance payments made to facilitate the evacuation of employees or their families and dependents from places where there is imminent military or other danger to their lives. Setoff may be made "against accrued pay, amount of retirement credit, or other amount due the employee from the Government." 5 U.S.C. § 5522(c)(1). Under the second statute, 5 U.S.C. § 5705, agencies are authorized to make travel advances to employees and to recover unused or misused amounts by "setoff against accrued pay, retirement credit, or other amount due the employee [or by] deduction from an amount due from the United States." The third statute, 5 U.S.C. § 5724, authorizes agencies to pay travel and transportation expenses in connection with permanent changes of station. Subsection 5724(f) provides that "an advance of funds may be made to an employee * * * with the same safeguards required under section 5705 of this title." We have previously interpreted this provision to authorize the use of administrative offset. 58 Comp. Gen. 501, 502 (1979); B-194159, October 30, 1979. None of these three statutes specifies the procedures, if any, that must be followed when taking administrative offset.

Effect of Debt Collection Act on Preexisting Statutes

The first issue to consider is the effect of sections 5 and 10 of the DCA on the various preexisting offset statutes. We begin our analysis with the premise that sections 5522, 5705, and 5724 (as well as the many other statutes which authorize administrative offset with regard to particular types of debts and debtors) have survived the

^{2/} E.g., 5 U.S.C. §§ 5511(b) (debts owed by employees removed for cause), 5512(a) (setoff against accountable officers), 5513 (setoff to recoup disallowed payments), 5522(a)(1) (setoff to recoup advance payments for evacuations), 5705(1) and (2) (setoff to recoup travel advances), 5724(f) (setoff to recoup advances for travel and transportation expenses); 37 U.S.C. § 1007 (setoff against Army and Air Force members); 42 U.S.C. §§ 300w-5 (setoff to collect debts owed by states under the Preventive Health Services Block Grant); 300x-5 (setoff to collect debts owed by states under the Alcohol, Drug Abuse, and Mental Health Block Grant).

enactment of sections 5 and 10 of the DCA. This premise follows from the well-settled principle of statutory construction that a statute dealing with a narrow, precise, and specific subject is not submerged or impliedly repealed by a later-enacted statute covering a more generalized spectrum, unless the intent to do so has been made unmistakably clear. 58 Comp. Gen. 687, 691-92 (1974) (citing Morton v. Mancari, 417 U.S. 535, 550-551 (1974)). Cf., e.g., 34 Comp. Gen. 170 (1954) (original enactment of the act codified at 5 U.S.C. § 5514 did not impliedly repeal 5 U.S.C. § 5513). Moreover, as this Office has previously observed:

"An act is not impliedly repealed because of a conflict, inconsistency, or repugnancy between it and a later act unless the conflict, etc., is plain, unavoidable, and irreconcilable, and the two acts cannot be harmonized or both cannot stand, operate, or be given effect at the same time. If it is possible to do so, by any fair and reasonable construction, two seemingly repugnant acts should be harmonized or reconciled so as to permit both to stand and be operative and effective and thereby avoid a repeal of the earlier act by implication." 53 Comp. Gen. 853, 856 (1974).

Under these longstanding rules, we find that the DCA did not impliedly repeal or amend other preexisting offset statutes. This conclusion was implicitly embraced in both Subpart K (which implements section 5) and the FCCS (which implement section 10). See Subpart K, § 550.1102(b)(1), 49 Fed. Reg. at 27470, 27472; and FCCS, § 102.3(b), 49 Fed. Reg. at 8898, respectively.

Section 5 and the OPM Regulations

Under the definition contained in section 10 of the DCA, the term "administrative offset" means "the withholding of money payable by the United States or held by the United States on behalf of the person to satisfy a debt owed the United States by that person." 96 Stat. at 1755. In promulgating Subpart K, OPM expressly concluded that a salary offset taken pursuant to section 5 is a kind of "administrative offset." Subpart K, § 550.1102(b), 49 Fed. Reg. at 27472. We agree. In common parlance, the terms "salary offset" and "administrative offset" have come to be

associated with sections 5 and 10, respectively, of the DCA. More accurately, however, the term "administrative offset" is a general term embracing all offsets accomplished by other than judicial process. Thus, in the sense that it is non-judicial, salary offset under 5 U.S.C. § 5514 is also a form of administrative offset. Similarly, salary offset under statutes other than 5 U.S.C. § 5514 is also a form of administrative offset. Nothing in the legislative history of section 10 suggests the contrary.^{3/}

In promulgating Subpart K, OPM also concluded that "[b]ecause it is an administrative offset, debt collection procedures for salary offset which are not specified in [section 5] and these [OPM] regulations should be consistent with the provisions of [the] FCCS." Subpart K, § 550.1102(b), 49 Fed. Reg. at 27472. We concur in this conclusion as well. In fact, section 5 specifically provides that "[t]he collection of any amount under [section 5] shall be in accordance with the [FCCS]." 5 U.S.C. § 5514(a)(3). Finally, OPM concluded that "the procedures contained in [Subpart K] do not apply * * * to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances under 5 U.S.C. 5705 and employee training expenses under 5 U.S.C. 4108)." Subpart K, § 550.1102(b)(1), 49 Fed. Reg. at 27472. With this conclusion we also agree. Since the other salary offset statutes survive the enactment of section 5, and since section 5 does not expressly purport to set the procedures governing offset under those other statutes, we conclude, as did OPM, that section 5 and OPM's implementing regulations do not apply to offsets taken under statutes other than 5 U.S.C. § 5514.

To summarize our conclusions thus far, we find that:

- The Debt Collection Act did not repeal, either expressly or by implication, other preexisting statutes authorizing or mandating offset to collect debts owed to the United States.
- Salary offset taken under the authority of 5 U.S.C. § 5514 is governed by the procedures contained in that

^{3/} Cf., e.g., Perrin v. United States, 444 U.S. 37, 42 (1979); 38 Comp. Gen. 812, 813 (1959) (plain meaning rule of statutory construction).

section and OPM's implementing regulations. Any procedures for salary offset under 5 U.S.C. § 5514 that are not specified in that statute or the OPM regulations should be consistent with the provisions of the FCCS.

- The procedures specified in 5 U.S.C. § 5514 and OPM's implementing regulations do not apply to offsets taken under other statutes such as 5 U.S.C. §§ 5522, 5705, or 5724.

Section 10 and the FCCS

We have noted the broad definition of "administrative offset" in section 10, and have established that all non-judicial offsets, including offsets against the salary of Federal employees, are varieties of "administrative offset." Therefore, and since salary offsets under statutes other than 5 U.S.C. § 5514 are not governed by section 5514 or OPM's implementing regulations, it is logical to look to section 10 and its implementing regulations, the FCCS, for relevant procedures.

The plain meaning of the "administrative offset" definition in section 10 clearly suggests that it encompasses offsets taken pursuant to other statutory or common law authority. However, section 10 also specifically provides that it shall not apply in any case in which a statute explicitly provides for or prohibits using administrative offset to collect the claim or type of claim involved. 96 Stat. 1755. Consequently, even though offsets taken pursuant to other statutes fall within the definition of administrative offset, it may be argued that, without more, the specific procedural provisions of that section do not apply to the other statutory offsets. As we noted above, section 5 of the DCA specifically provides that offsets taken under its authority must be consistent with the FCCS. The other statutes cited by the Chief Counsel have no similar provision. The FCCS address this concern.

Since 1966, GAO and the Department of Justice have taken the position in the FCCS (based on an express provision in the 1966 act,^{4/}) that nothing in the FCCS is

^{4/} Federal Claims Collection Act, Pub. L. No. 89-508, § 4, 80 Stat. 309 (1966).

intended to preclude agency disposition of any claim under other applicable statutes and appropriate implementing regulations. In those cases, the laws and implementing regulations which are specifically applicable to the claims collection activities of particular agencies (or particular classes of debts or debtors) take precedence over the FCCS. E.g., FCCS, § 101.4, 31 Fed. Reg. 13381 (Oct. 15, 1966); FCCS, § 101.4, 49 Fed. Reg. at 8897. However, the FCCS has also provided since 1966 that "the standards set forth in [the FCCS] should be followed in the disposition of civil claims by the Federal Government * * * where neither the specific statute nor its implementing regulations establish standards governing such matters." Id. Cf. 62 Comp. Gen. 489, 494 (1983); 62 Comp. Gen. 599, 602 (1983); 63 Comp. Gen. 10, 11 n.1 (1983).

In accordance with this longstanding principle, the FCCS specifically provide in pertinent part that "[e]xcept as provided in section 101.4 [as quoted above], * * * the standards in this paragraph shall apply to the collection of debts by administrative offset under 31 U.S.C. § 3716, some other statutory authority, or the common law." FCCS, § 102.3(b), 49 Fed. Reg. at 8898.^{5/} In other words, the FCCS provide that, to the extent that a particular offset statute either specifically addresses the procedures to be followed, or authorizes an agency to specify procedures in its own regulations that are different from the FCCS provisions (and the agency promulgates such regulations), then the inconsistent provisions of the FCCS need not be complied with when taking offset under the other statute and regulations. For example, in 62 Comp. Gen. 489 (1983), we found that the Economic Development Administration (EDA) has independent statutory authority to compromise debts owed to it. Therefore, EDA may legally sell its accounts receivable at a discount, if it so chooses. Nevertheless, we pointed out that, to our knowledge, EDA has not adopted regulations establishing specific standards for collecting or compromising loans through the sale of accounts receivable. Accordingly, we advised EDA that "unless and until EDA adopts regulations establishing definite standards governing the compromise of claims, it should follow the applicable standards and guidelines set forth in the [FCCS]." Id. at 494.

^{5/} An earlier version of the FCCS had expressly applied to offsets under 5 U.S.C. §§ 5522, 5705, and 5724. 4 C.F.R. § 102.3(b), 46 Fed. Reg. 39113 (1981).

Compare 62 Comp. Gen. 599, 602 (applicability of FCCS to offset under the Social Security Act); and 63 Comp. Gen. 10, 11 n.1 (applicability of FCCS to programs and agencies specifically exempted from the DCA).

There is another reason why agencies taking offset under statutes other than section 10 should look to the procedures in section 10 and the implementing FCCS provisions. The fact that a statute or implementing regulation is silent with regard to the need or substance of procedural protections does not necessarily mean that none are required. Based on our review of existing case law, we think there is a high likelihood that the courts would conclude that a debtor-employee is entitled to notice and an opportunity to be heard in some appropriate form. See, for example, Sniadach v. Family Finance Corp., 395 U.S. 337 (1969); Atwater v. Roudebush, 452 F. Supp. 622 (N.D. Ill. 1976); Coleman v. Block, 580 F. Supp. 194 (D.N.D. 1984). In Sniadach, the Supreme Court expressly recognized that a person's entitlement to earned wages is a property right. Thus, the question would seem to be not whether procedural protections are required, but what form they should take.

Again based on our reading of existing case law, it is our opinion that the procedures set out in section 10, as implemented in section 102.3 of the FCCS, are fair and reasonable, and satisfy minimum procedural requirements.^{6/}

Conclusion

For the foregoing reasons, we find that sections 5 and 10 of the DCA of 1982 did not impliedly repeal 5 U.S.C. §§ 5522, 5705, or 5724, or any other similar statutes. Those statutes continue to provide the legal basis for the taking of administrative offset with regard to the specific types of debts or classes of debtors with which those statutes are concerned. We find further that 5 U.S.C. § 5514 (as amended by section 5 of the DCA and implemented in Subpart K, supra) provides the authority for, and specifies the procedures that govern, all salary offsets which are not expressly authorized or required by other more specific

^{6/} See e.g., Goss v. Lopez, 419 U.S. 565 (1975); Mathews v. Eldridge, 424 U.S. 319 (1976); and Califano v. Yamaski, 442 U.S. 682 (1979).

statutes (such as 5 U.S.C. §§ 5522, 5705, and 5724). We also find that, except as provided in section 101.4 of the FCCS, when taking administrative offset under 5 U.S.C. §§ 5522, 5705, 5724, other similar statutes, or the common law, the procedures specified in section 10 of the DCA, as implemented in section 102.3 or 102.4 of the FCCS, should be followed.^{7/}

Milton J. Fowler
for Comptroller General
of the United States

^{7/} This decision should not be construed as prohibiting a debtor and an agency from contractually agreeing to be bound by some alternative procedures, or to waive procedural protections. See e.g., D.H. Overmeyer Co. v. Frick Co., 405 U.S. 174, 185-86 (1972), citing National Equipment Rental Ltd. v. Szukhent, 375 U.S. 311, 315-16 (1964).