



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-254130

August 23, 1993

The Honorable Carl Levin
The United States Senate
477 Michigan Avenue
Detroit, MI 48226

Dear Senator Levin:

This responds to your letter of June 30, 1993, concerning a request for assistance that you received from your constituent, Mr. . . ., and his client Ms. . . . of Apollo Drywall, Inc. In July 1992, Mr. . . . obtained a judgment against the United States on behalf of Apollo Drywall. The judgment required the Internal Revenue Service (IRS) to refund tax amounts it improperly assessed and collected from Apollo Drywall. Your letter indicates that you have been advised that this Office has taken no action to certify payment of that judgment and that this has compelled Mr. . . . to file motions in court to compel payment. In this regard, it appears that you have been misinformed. While our informal inquiries to the IRS and the Department of Justice (DOJ) confirm that the judgment in favor of Apollo Drywall has yet to be paid, this is not due to any action or inaction on the part of this Office.

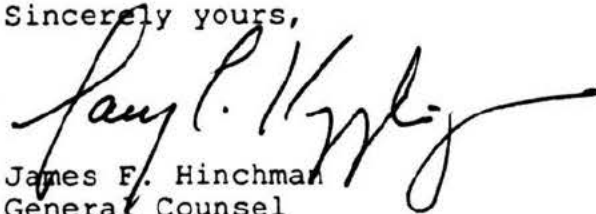
As you know, pursuant to 31 U.S.C. § 1304, most judgments against the United States are normally referred to the Comptroller General for certification of payment from the permanent, indefinite appropriation known as the Judgment Fund. However, section 1304 precludes certification and payment from the Judgment Fund where payment of the award at issue is "otherwise provided for," that is, where some other source of funds is legally available to pay the award. This is such a case: Section 101 of the Supplemental Treasury and Postal Office Departments Appropriation Act for Fiscal Year 1949 created a separate, permanent, indefinite appropriation for the payment of judgments for tax refunds. 62 Stat. 560, 561 (1948). Consequently, IRS processes tax refund judgments without any involvement by the Comptroller General. Cf. B-211389, July 23, 1984.

We spoke informally with Mr. . . . of the DOJ Tax Division . . ., who is representing the United States in the litigation of this case, concerning the status of this judgment. Mr. . . . told us that he has made

several requests to the appropriate IRS tax refund processing center for payment of the award to Apollo Drywall. Unfortunately, for reasons that are not clear to Mr. _____, his requests have gone unheeded. Mr. _____ agrees that payment of this award is long past due, and said that he will redouble his efforts to see that payment is made.

We hope that the forgoing will prove helpful to you and your constituents. Please do not hesitate to contact me if we may be of further assistance.

Sincerely yours,

for 

James F. Hinchman
General Counsel

B-254133

DIGEST

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The Judgment Fund, 31 U.S.C. § 1304, is not available for payment of judgments for tax refunds. The Internal Revenue Service has a separate, permanent, indefinite appropriation for that purpose. 62 stat. 650, 561 (1948).