

**DECISION**

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

FILE:

DATE: AUG 19 1976

MATTER OF: B-185466

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98653

DIGEST:

Department of Defense Military Pay and  
Allowance Committee Action No. 523

While automatic suspension of collection action in all cases upon receipt of applications for waiver of debts under 5 U. S. C. 5584, 10 U. S. C. 2774, and 32 U. S. C. 716 would not be proper, suspension of collection may be made in appropriate cases based on various considerations and provided it is determined in each case that the interest of the Government would not be adversely affected.

This action is in response to a letter, dated November 26, 1975, from the Assistant Secretary of Defense (Comptroller), requesting a decision concerning the suspension of collection action when a military member or former member submits a request for waiver under 10 U. S. C. 2774 (Supp. II, 1972). The specific question and discussion thereof are contained in Department of Defense Military Pay and Allowance Committee Action No. 523, which was attached to the request.

The question presented in the Committee Action is:

"May the Services temporarily suspend collection action when a military member or former member submits a request for waiver under 10 U. S. C. 2774?"

The discussion in the Committee Action states that, 10 U. S. C. 2774, as added by Public Law 92-453, approved October 2, 1972, authorizes the waiver of claims for erroneous payments of pay and allowances to members or former members of the uniformed services. The comment is made that neither the statutory language nor its legislative history explicitly discusses the suspension of collection action in such circumstances, although when read together there is a suggestion that Congress intended collection action to continue when a waiver application is submitted.

It is also stated that present Department of Defense policy, as reflected in Department of Defense Pay and Allowances Entitlements

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Manual paragraph 70751, and based upon a memorandum issued by the Acting Assistant Secretary of Defense (Comptroller), dated January 26, 1973, requires the continuation of collection action for military members and former members. On the other hand, it is stated, the Department's policy with regard to civilian employees or former employees who submit applications for waiver of claims for erroneous payments of pay and allowances under 5 U. S. C. 5584 is to temporarily suspend collection action pending decision upon the application. This policy is based upon the Comptroller General's letter B-152040/B-158422, December 26, 1968, to Heads of Executive Agencies setting forth the standards for waiver of claims for erroneous payments of pay for civilian employees under Public Law 90-616, approved October 21, 1968, 5 U. S. C. 5584 (1964 Ed., Supp. IV, 1968). However, following the enactment of Public Law 92-453 which added 10 U. S. C. 2774 and 32 U. S. C. 716, and amended 5 U. S. C. 5584 to include waivers of claims for erroneous payments of allowances, the standards set forth in B-152040/B-158422, December 5, 1972, regarding waiver under those sections did not address the issue of suspension of collection actions.

The view is expressed in the Committee Action that, in light of the similar wording of 5 U. S. C. 5584 and 10 U. S. C. 2774, and the standards in B-152040/B-158422, December 26, 1968, the collection policies for present and former civilian and military personnel who have submitted waiver applications under those sections should be the same. In particular, it is stated that collection action relative to military members or former members should be suspended in a manner similar to the current practice used when civilian employees or former employees submit applications for waiver.

The general policy concerning agency collection actions on claims is as provided in the Federal Claims Collection Standards, 4 C. F. R. 101, et seq. (1976), promulgated pursuant to the Federal Claims Collection Act of 1966, Public Law 89-508, approved July 19, 1966, 80 Stat. 803, 31 U. S. C. 951-953 (1970). Those Standards require generally that the head of an agency or his designee shall take aggressive action, on a timely basis with effective follow-up, to collect all claims of the United States for money or property arising out of, or referred to, his agency. Such action includes written demands upon debtors, collection by

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offset, personal interviews with debtors, etc. 4 C.F.R. 102 (1976). See also section 55.2, title 4, General Accounting Office Policy and Procedures Manual for the Guidance of Federal Agencies (4 GAO).

Under the current provisions of 5 U.S.C. 5584, 10 U.S.C. 2774 and 32 U.S.C. 716, a claim of the United States arising out of an erroneous payment of any pay or allowances, other than travel and transportation allowances, made to or on behalf of a civilian employee, a member or former member of the uniformed services, or a member or former member of the National Guard, respectively, may be waived in whole or in part under certain conditions. Subsections 5584(c), 2774(c) and 716(c) of those statutes provide for refund of any amount a person has repaid to the United States with respect to which waiver is granted under those statutes.

As the Committee Action indicates, neither the language of those waiver statutes nor their legislative histories give any clear indication of congressional intent that collection action should be automatically suspended in all cases upon the submission by a debtor of an application for waiver. In fact, as is indicated above, subsections (c) of those statutes authorize refund of any amounts collected, and therefore, if the claim is collected and later waived, the amount collected may be refunded. In this regard those waiver statutes differ from the waiver provisions applicable to erroneous payments under the Survivor Benefit Plan which contains no refund provision. 10 U.S.C. 1453 (Supp. II, 1972). In cases involving that provision we have authorized suspension of collection action upon receipt of a waiver request. See B-183863, July 18, 1975; B-184532, September 16, 1975; and B-185545, March 18, 1976. To have held that suspension in those cases was not permitted would partially or wholly nullify the effect of the waiver since the amount collected if not subject to suspension could not be refunded.

The statement in the Comptroller General's December 26, 1968 letter upon which the policy to suspend collection action against civilian employees, referred to in the Committee Action, is apparently the following:

"Collection action may be suspended pending waiver action where indicated."

While the language of that statement does not provide precise guidelines regarding suspension, we do not view it as indicating that in all cases collection action should be suspended upon receipt of a waiver application. To the contrary, it is our view that, while collection action may be suspended in certain cases depending upon the circumstances, automatic suspension of collection action in all cases whether civilian or military, is not in the best interests of the United States.

In making the determination in each case as to whether suspension of collection would be appropriate consideration should be given to whether:

1. There is a reasonable possibility that waiver will be granted.
2. The Government's interests would be protected if suspension is granted by reasonable assurance that the erroneous payment could be recovered if waiver is not granted.
3. The collection of the debt will cause undue hardship.

The question presented is answered, therefore, by saying that automatic suspension of collection action should not be made in all cases when waiver is being considered under 10 U. S. C. 2774, 5 U. S. C. 5584, or 32 U. S. C. 716. However, we would not object to suspension in individual cases in which it is determined that suspension is desirable considering the relevant factors pointed out above.

R.F.KELLER

[Deputy]

Comptroller General  
of the United States .