DECISION

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

30841

FILE: B-205508 DATE: March 29, 1985

MATTER OF: Disposition of amounts recovered for damage to Government motor vehicles

DIGEST:

Amounts recovered by Government agency from private party or insurer representing liability for damage to Government motor vehicle may not be retained by agency for credit to its own appropriation, but must be deposited in general fund of Treasury as miscellaneous receipts in accordance with 31 U.S.C. § 3302(b). 61 Comp. Gen. 537 distinguished.

The Assistant Attorney General for Administration, Department of Justice, asks whether the Department may retain, for credit to its own appropriation, amounts received from private parties or their insurers for liability resulting from motor vehicle accidents. Although the request is limited to motor vehicle accidents, the principles involved would appear to apply to other Government property as well. As discussed below, we see no reason to depart from the traditional principle that the monies must be deposited in the general fund of the Treasury as miscellaneous receipts.

In the hypothetical situation presented, a private party negligently collides with a parked Government vehicle, causing damage in the amount of $1,500. The agency then proceeds to have the vehicle repaired. The Government is entitled to pursue a claim for damages against the private party (or its insurer) under common law tort principles. The Assistant Attorney General states that the Department's practice thus far has been to account for such recoveries as miscellaneous receipts.

At the outset, we note that, as a practical matter, we are primarily talking about vehicles purchased or leased by a particular agency and not General Services Administration (GSA) motor pool vehicles. GSA motor pool vehicles are governed by the Federal Property Management Regulations. If a GSA motor pool vehicle is damaged by the negligent or wrongful act of an identifiable party other than the user agency or its employee, GSA will pursue the Government's claim and the user agency will not be charged for the repairs. 41 C.F.R. §§ 101-39.805, 101-39.807 (1983).

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The disposition of monies received for the use of the United States is governed by 31 U.S.C. § 3302(b) (1982) (formerly 31 U.S.C. § 484), which requires prompt deposit in the general fund of the Treasury unless there is statutory authority for some other disposition. In addition, an agency may retain receipts which qualify as "refunds to appropriations" as defined in Treasury Department-GAO Joint Regulation No. 1, § 2b, September 22, 1950, reprinted in GAO Policy and Procedures Manual for Guidance of Federal Agencies, title 7, Appendix B.[1/] Since there is no statutory authority which would permit agency retention of recoveries in the situation under consideration, the question is whether the recovery may be deemed a "refund" within the scope of the regulation.

It is suggested that agency retention of the recovery in this case follows from our decision in 61 Comp. Gen. 537 (1982). In that decision, we held that an agency may retain amounts received from a carrier or insurer for damage to an employee's personal property where the agency has paid a claim by the employee under 31 U.S.C. § 3721, and may credit those amounts to the appropriation from which the employee's claim was paid.

As we pointed out in 61 Comp. Gen. 537, an agency has a choice, based on its own policy determination, when considering claims under 31 U.S.C. § 3721. The agency may, if it so chooses, pay the employee's claim immediately without awaiting any third-party settlement. The agency then becomes subrogated to the employee's claim against the liable third party. Alternatively, the agency may require the employee to pursue the third-party claim first, and consider any remaining claim by the employee only after the third-party claim has been settled.

If the agency chooses the latter policy, it will not receive third-party recoveries but will pay correspondingly lesser amounts to its employees in cases where there is third-party liability. If the agency chooses the former policy, it will be paying somewhat higher amounts to its

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[1/] Refunds to appropriations, as defined in § 2b, "represent amounts collected from outside sources for payments made in error, overpayments, or adjustments for previous amounts disbursed, including returns of authorized advances."

employees in the first instance, in anticipation of the third-party recovery. In this situation, we concluded that "it is entirely legitimate to treat a third-party recovery as a reduction in the amount previously disbursed rather than as an augmentation of the agency's appropriation." 61 Comp. Gen. at 540. The recovery is analogous to the recovery of an overpayment or the return of an unused advance, and may properly be treated as a refund to the disbursing appropriation.

It is the nature of the agency's discretion under 31 U.S.C. § 3721, as described above, that distinguishes 61 Comp. Gen. 537 from the instant situation. If the agency wishes to have its motor vehicle repaired (and in many cases it will have no choice), it must pay for the repairs, and the amount it pays bears no relationship to the possibility of a third-party recovery.

By way of contrast, the instant situation is similar to our decision in 52 Comp. Gen. 125 (1972), holding that recoveries from tortfeasors pursuant to the Federal Medical Care Recovery Act must be deposited in the Treasury as miscellaneous receipts. See 61 Comp. Gen. at 539-40. While recoveries in the instant case, as in 52 Comp. Gen. 125, are certainly "related" to a prior expenditure, they are not "adjustments" of a prior disbursement as contemplated in the regulation.[2/]

The Assistant Attorney General also notes our decisions to the effect that no impermissible augmentation results where the private party responsible for the damage either replaces the property in kind or makes payment directly to the party making the repairs. E.g., 14 Comp. Dec. 310 (1907). While this is true, it is nothing more than an exception that may be advantageous if the timing of repair and payment can be made to coincide.

Finally, we note that where the Congress has found it desirable to permit agency retention of recoveries in the type of situation involved in this case, it has provided the necessary authority by statute. For example, the GSA motor pool system, noted earlier in this decision, is financed by means of the General Supply Fund. 40 U.S.C. § 491(d).

2/ To look at it another way, a recovery in the instant situation would amount to the refund of an "earned payment," which must be accounted for as a miscellaneous receipt. 39 Comp. Gen. 647, 649 (1960).

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Recoveries for damage to property procured through the Fund are expressly authorized to be credited to the Fund. 40 U.S.C. § 756(c).

In view of the foregoing, absent statutory authority to the contrary, amounts received by an agency for liability resulting from damage to Government property must be deposited in the Treasury as miscellaneous receipts. 26 Comp. Gen. 618 (1947). The Treasury Department has established a receipt account for this purpose, account no. 3019, "Recoveries for Government property lost or damaged, not otherwise classified."

for Harry R. Van Cleve
Comptroller General
of the United States