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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Minerals Management Service of the Department
of the Interior

File: B-249350

Date: March 3, 1993

DIGEST

Where section 506 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1334(a)(2), charged the Secretary of the Interior to promulgate regulations specifying the interest rates to be used in calculating compensation due canceled lessees, the Secretary may establish any interest rate that is not arbitrary or inconsistent with the statute.

DECISION

The Minerals Management Service of the Department of the Interior requests an opinion on what interest rates and compounding periods it may adopt in its regulations regarding compensation for lessees whose Outer Continental Shelf natural gas and oil leases are canceled. We find that the Minerals Management Service, under its broad discretion in fashioning its regulations, may use any interest rate and simple interest to calculate compensation due a canceled lessee so long as such interest rate is not arbitrary or inconsistent with the language of the statute or statutory purpose. However, we recommend that the Service adopt the lowest reasonable interest rate.

BACKGROUND

The Outer Continental Shelf Lands Act provides that the Secretary of the Interior shall issue rules and regulations with regard to the leasing of the Outer Continental Shelf in order to prevent waste and conserve natural resources. The Act further provides that the Secretary may cancel a lease if the Secretary determines, generally, that (1) continued activity would harm the environment, (2) the threat of harm will not decrease to an acceptable level within a reasonable period, and (3) the advantages of cancellation outweigh the advantages of continuing the lease. See 41 U.S.C. § 1334(a)(2)(A) (1983). The provision on compensation due a canceled lessee provides:

" . . . that such cancellation shall entitle the lessee to receive such compensation as he shows to the Secretary as being equal to the lesser of (i)

the fair value of the canceled rights as of the date of cancellation . . . , or (ii) the excess, if any, over the lessee's revenues, from the lease (plus interest thereon from the date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of such lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from date of payment to date of reimbursement)"

43 U.S.C. § 1334(a)(2)(C) (1988).

The Service has never canceled a lease under this provision. However, the Service is currently developing new regulations to provide more specific guidance on the cancellation determination and the amount of compensation due a canceled lessee.¹

OPINION

Our examination of this statute and its legislative history indicates that Congress did not specify the applicable interest rate or compounding period, if any, to be used in calculating compensation due a canceled lessee; instead, Congress directed the Secretary to promulgate regulations addressing, inter alia, the details of lease cancellations. 43 U.S.C. § 1334(a) (1988). When Congress explicitly directs an agency to fill a gap in a program's administrative structure, the legislatively directed regulations are accorded great deference. Chevron U.S.A. v. Natural Resources Defense Council, 467 U.S. 837, 844 (1984); Colonel William J. Jackonis, 58 Comp. Gen. 635 (1979). Ordinarily, such legislative regulations "are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute." Chevron at 844. Thus, as a general proposition, the Service may establish in its

¹In February 1991, we reported to the Chairman of the Subcommittee on the Interior and Related Agencies, House Committee on Appropriation, on the cost to repurchase offshore oil and gas leases. In estimating the cost, we utilized simple interest and provided costs resulting from the use of three different interest rates: government cost to borrow, corporate costs to borrow, and industry rate of return on investment. Mineral Revenues: Potential cost to Repurchase Offshore Oil and Gas Lease, GAO Rpt., B-242732, Feb. 22, 1991.

regulations any interest rate consistent with the purpose of the statute and not otherwise arbitrary or capricious.

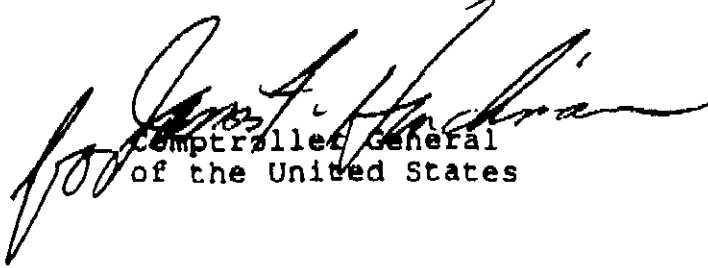
What legislative history there is relevant to this issue does provide some general guidance useful in setting the interest rate. The Report of the House Ad Hoc Select Committee on the Outer Continental Shelf, to which the bill was referred, notes that the provision on compensation due canceled lessees was meant to ensure that lessees would receive "adequate" compensation. H.R. Rep. No. 95-590, 95th Cong., 1st Sess. at 132 (1977). In addition, the House Report recognizes that bidders for these leases knew that they could be canceled and reimbursed under a sunk cost formula and could be expected to bid accordingly. *Id.* Thus, the House Report explains that the lessee should receive "the value of the rights or restitution of the excess costs over revenues, whichever is less." *Id.*

In our opinion, the Service has the discretion to select one of any number of different interest rates. In this regard, our February 1991 report on the potential costs to cancel offshore oil and gas leases used three different rates to calculate potential interest costs, any one of which would appear to be within the Service's permissible range of discretion. See Fn. 1 above. Congress has provided that canceled lessees be compensated by the lesser of fair market value and sunk cost. We recommend that the Service take the same kind of conservative approach and adopt a rate that will minimize costs to the government while still being fair to lessees.

The same considerations apply to the choice between simple and compound interest. Generally, the government pays simple interest. For delay compensation for takings under the Fifth Amendment, for example, it continues to be the rule that simple interest accrues from the date of taking.² Similarly, the government pays simple interest under the Contract Disputes Act, 41 U.S.C. § 611 (1988); Central Mechanical, Inc., 85-2 BCA ¶ 18005 (1985). These examples

²See Cherokee Nation v. United States, 270 U.S. 476 (1926); Branning v. United States, 784 F.2d 361 (Fed. Cir. 1986); Miller v. United States, 629 F.2d 813 (1980); Paul v. United States, 21 Cl. Ct. 415 (1990). Some courts have begun to allow compound interest in the patent area. See Dynamics Corporation v. United States, 766 F.2d 518 (1985); ITT Corp. v. United States, 17 Cl.Ct. 199 (1989).

reflect the general rule that when the government pays interest, it pays simple interest unless the statute specifies otherwise. United States v. Isthmian Steamship, 359 U.S. 314, 325 (1959); Cherokee Nation v. United States, 270 U.S. 476 (1926).


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