



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

2/56
149825

Decision

Matter of: Department of the Treasury - Collection of
Unclaimed Properties

File: B-248623

Date: January 22, 1993

DIGEST

1. Contracting authority under the Debt Collection Act, 31 U.S.C. § 3718, is not available to the Department of the Treasury for the purchase of information identifying unclaimed property, typically cash, held by third-party financial institutions; thus, Treasury may not use recovered property to pay for the purchase of information from contractors.

2. Treasury may use its appropriations to purchase information identifying unclaimed properties belonging to the agency if it can show that the purchase of such information is a necessary expense of the appropriation charged.

DECISION

The Fiscal Assistant Secretary, Department of the Treasury, is interested in contracting with several collection firms to acquire information identifying unclaimed properties, typically cash, held by third parties that may be property of, or owed to, federal agencies. The Fiscal Assistant Secretary asks whether Treasury may use the authority contained in the Debt Collection Act, 31 U.S.C. § 3718, to pay the collection firms out of amounts recovered. For the reasons discussed below, we conclude that the Debt Collection Act is not available to pay what in essence are finders fees for abandoned or unclaimed property. Treasury or other federal agencies may use their appropriations to pay for information identifying unclaimed amounts if the agency can show that the purchase of such information is necessary to the accomplishment of authorized agency functions funded from the appropriation to be charged.

BACKGROUND

Several companies have approached the Department of the Treasury asserting that they have information identifying substantial amounts of unclaimed federal property that are being held in banks and other financial institutions throughout the country and in various parts of the world.

PUBLISHED DECISION

72 Comp. Gen.

50105

Treasury has not confirmed the existence or the amount of such property and the companies refuse to divulge such information prior to entering into contractual agreements.

Treasury proposes to collect all unclaimed amounts owed to the government by contracting for information identifying the properties and their location, and for certain administrative services (for example, assistance in obtaining forms necessary for asserting and certifying rightful ownership). Treasury would like to use a portion of the amounts recovered to pay the contractors, and asks whether it may do so under the authority contained in the Debt Collection Act of 1952, 31 U.S.C. § 3718.

DISCUSSION

As a general matter, an agency receiving money for the United States from any source, unless otherwise authorized, must deposit that money into the miscellaneous receipts of the Treasury, without deduction for any charge or claim. 31 U.S.C. § 3302(b). See 64 Comp. Gen. 366, 368 (1985). The Debt Collection Act provides a limited exception to 31 U.S.C. § 3302(b). In this regard, the Debt Collection Act, 31 U.S.C. § 3718 (a) and (d), permits agencies to contract for the collection of delinquent debts owed the United States, and authorizes the agencies to pay their contractors from the amounts recovered. See 67 Comp. Gen. 48, 50 (1987).

This authority, however, is available for the collection of delinquent debts, not for finders fees for unclaimed or abandoned property. In 64 Comp. Gen. at 368, we concluded that the Debt Collection Act's authority to pay contractors out of the proceeds of their activities relates to delinquent debts, and does not permit the payment of contractors for account servicing activities. We explained that an agency may contract for collection services only after it has "found [the debt] to be past due and owing, having afforded the alleged debtor the right to protest, have his protest adjudicated administratively, and generally to have the benefit of all due process procedures to which he is entitled by law." Id. The purpose of the Debt Collection Act was to give the government "the tools it needs to collect these debts, while safeguarding the legitimate rights of privacy and due process of debtors." 128 Cong. Rec. 25,252 (1982).

Treasury attempts to avail itself of the authority contained in 31 U.S.C. § 3718 (a) and (d) by arguing that the unclaimed property represents, in all likelihood, either misdirected payments on delinquent debts or payments that, if not originally delinquent, now are or will be delinquent.

2751

According to Treasury, "99.9%" of the unclaimed amounts at issue here are delinquent debts. It asserts that "[t]here is also little question that certain categories of unclaimed assets, such as those paid as income tax payments to the Internal Revenue Service, are, were, or became delinquent debts."

The Debt Collection Act's special contract authority applies to delinquent debts. Treasury, eventually, may find that a substantial percentage of the unclaimed property represents delinquent debts still owing to the United States. At this point, however, Treasury cannot identify any particular debt owed the government, nor can it identify the debtor, much less ensure that the debtor has been afforded procedural due process and that the debt is, indeed, delinquent. Treasury's proposal amounts to nothing more than a contract for the purchase of information about amounts possibly owed the government. The Debt Collection Act's contracting authority and the associated authority to pay contractors from amounts collected are not available in this situation. See 67 Comp. Gen. at 50.

The Department of the Treasury may finance contracts to acquire information concerning unclaimed property or funds of Treasury by charging the appropriate departmental or agency appropriation account. We have long held that an appropriation is available for expenses which are "necessary or proper or incident" to the execution of the object of the appropriation. 6 Comp. Gen. 619, 621 (1927).

In this regard, if Treasury believes that contracting with collection firms to obtain information identifying the agency's unclaimed properties is a necessary expense,¹ we would not object to such a contract. If, as a result of the information purchased under such contracts, Treasury can

¹In determining whether Treasury's appropriations are available, Treasury will need to consider the type of property at issue and its relationship to its authorized activities and functions. For example, the Administrator of General Services, not the Secretary of the Treasury, has authority to contract for information regarding certain abandoned property that, by right of sovereignty or law, ought to come to the United States. 40 U.S.C. § 310.

209

identify a debtor and properly establish the delinquency of the debt, Treasury may then turn over the delinquent account to a collection contractor for recovery and pay the contractor from the amount collected.²

Milton L. Brown
for Comptroller General
of the United States

²Treasury speculates that the unclaimed amounts include amounts owed the Internal Revenue Service and the Customs Service. We note that the Debt Collection Act's contracting authority, including the authority to pay the contractor from the amounts collected, are not available with regard to debts owed under the Internal Revenue Code or the tariff laws. 31 U.S.C. §§ 3701 (d), 3718 (f).