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Comptroller General of the United States

Washington, D.C. 20548

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Decision

Matter of: Payment of Unpaid Treasury Checks More Than 6 Years Old

File: B-244431.2

Date: September 13, 1994

DIGEST

1. The Barring Act, 31 U.S.C. § 3702(b), applies to obligations underlying unpaid Treasury checks. Thus, the imposition by the Competitive Equality Banking Act of 1987 (CEBA) of a one year time limit on the negotiability of Treasury checks means that an individual who holds a Treasury check beyond the 1-year period must submit a claim within 6 years of the accrual of the claim on the underlying obligation or the claim is barred.

2. The Competitive Equality Banking Act of 1987 (CEBA), which imposes a 1-year time limitation on the negotiability of Treasury checks, contains savings clauses which provide that nothing in the Act "shall be construed to affect the underlying obligation" of a Treasury check. The effect of the savings clauses is to provide that CEBA does not affect the underlying obligation. The enforceability of the underlying obligation is controlled by whether a claim is received by the Comptroller General or the applicable agency within 6 years.

3. Competitive Equality Banking Act of 1987 (CEBA) did not amend 31 U.S.C. § 3328(c) which provides that a limitation on a claim imposed by 31 U.S.C. § 3702 does not apply to an unpaid Treasury check. Section 3328(c) only excepts unpaid Treasury checks from the limitation on claims against the United States contained in 31 U.S.C. § 3702. Although claims on unpaid checks are not subject to the 6-year limitation in section 3702, the obligation underlying an unpaid check is not affected by section 3328(c) and remains subject to the limitation on claims against the United States in section 3702.

DECISION

Arkansas Louisiana Gas Company ("ARKLA") and Motorola, Inc. have asked whether unpaid government checks issued more than 6 years prior to the receipt of a valid claim may be reissued. This request seeks reconsideration of a conclusion reached in a 1991 decision of this Office that claims not received by an agency or the Comptroller General within 6 years are barred under 31 U.S.C. § 3702(b) (Barring Act) notwithstanding that a Treasury check was timely issued but not presented for payment within the 1-year period imposed by the Competitive Equality Banking Act of 1987 (CEBA), Pub. L. No. 100-86, tit. X, 101 Stat. 552, 657-660 (1987). B-244431, October 8, 1991.

We conclude that CEBA requires that a holder of a Treasury check present it within 1 year of issuance, that an obligation underlying an unpaid Treasury check is subject to the Barring Act or other applicable statute of limitations, and that a replacement check may be issued by the Secretary of the Treasury if the obligation underlying an unpaid check is not barred. Therefore, a claim on an obligation underlying an unpaid Treasury check is barred unless a valid claim is received within 6 years of the accrual of the claim.

BACKGROUND

This issue arises due to CEBA provisions which place a 12-month limit on the negotiability of a Treasury check and impose a 1-year time limit for submitting claims arising on account of a Treasury check. Previously, Treasury checks were negotiable in perpetuity, notwithstanding that a claim on the underlying obligation was barred unless a claim was received within 6 years of the accrual of the claim. 31 U.S.C. § 3328(a)(1) (1982); 31 U.S.C. § 3702(b) (1988). Prior to CEBA, the barring of a claim on the underlying obligation was of little importance since the payor or holder could negotiate the check at any time or obtain a replacement if the original check was lost or defaced. This was true even if the underlying obligation was no longer enforceable as having been barred by 31 U.S.C. § 3702(b). Currently, a Treasury check may only be negotiated within 1 year of issuance; thereafter a new check will be issued only if the underlying obligation remains valid, that is, if it is not barred. 31 U.S.C. §§ 3328(a) and 3702(c)(1988).

ARKLA and Motorola ask that we reconsider our prior position. Each company was issued a check, one dated February 7, 1984, and the other dated February 21, 1984. (It is not clear from the record which check was issued to which company.) For reasons not stated in the record, both Treasury checks remain unpaid. By letter of August 18, 1993, the Defense Finance and Accounting Service denied the companies' request for issuance of replacement checks on the basis that the checks were issued more than 6 years prior to the receipt of a valid claim and were thus barred by 31 U.S.C. § 3702(b).

Requestors argue that CEBA merely places a 1-year limit on the negotiability of Treasury checks but does not affect the validity of obligations underlying unpaid Treasury checks. Their view is that prior to CEBA, the Barring Act did not apply to the obligation underlying an unpaid Treasury check because unpaid Treasury checks were specifically excepted from the Barring Act. See 31 U.S.C. § 3328(c) (1982). Requestors argue that this exception was carefully preserved by CEBA. They point to disclaimers contained in CEBA in three separate places that the underlying obligation for which a check was issued remains unaffected. See 31 U.S.C. §§ 3328(a)(3), 3334(c), and 3702(c)(2). Requestors also point out that CEBA did not amend subsection 3328(c). In their view, CEBA's only effect is to require that an owner or holder of a Treasury check present it for payment within 1 year or obtain, regardless of the passage of time, a replacement check.

Thus, in requestors view, the current law provides a "threefold limitations scheme." First, a claim must be received within 6 years by the Comptroller General or by the cognizant agency. Secondly, a claim on account of a Treasury check must be presented within 1 year of the issuance of the check or it is barred by section 3702(c). Finally, requestors argue that the obligation underlying a Treasury check is unaffected and is subject neither to the 6-year nor the 1-year limit.

ANALYSIS

In our view, the obligation underlying a Treasury check has always been subject to the Barring Act, and the disclaimers contained in CEBA make it clear that CEBA was not intended to change that result. Section 3328(c) does not provide otherwise. Each of these points is discussed in more detail below.

Application of the Barring Act to Obligations Underlying Unpaid Treasury Checks

Prior to CEBA, the statutory scheme distinguished claims arising on account of a Treasury check from claims on the underlying obligation. Treasury checks were payable in perpetuity, "a check drawn on the Treasury may be paid at any time." 31 U.S.C. § 3328(a) (1982). Claims relating to unpaid Treasury checks were specifically excepted from the Barring Act by section 3328(c). That section states that "[a] limitation imposed on a claim against the United States Government under section 3702 of this title does not apply to an unpaid check drawn on the Treasury or a designated depositary."[1] Under this scheme an owner or holder could at any time obtain either payment or replacement of an unpaid Treasury check by virtue of section 3328(a) and (c). As a result, by 1989 there were approximately 10 million unpaid Treasury checks outstanding, some of which were issued during the 1940s.

The underlying obligation liquidated by a Treasury check has always been subject to the 6-year limitation imposed by the Barring Act. That Act clearly provides that claims not filed with the Comptroller General within 6 years are barred. Baker and Ford Co., B-173348, February 27, 1979. A claim will also be preserved if it was timely filed with the cognizant agency on or after June 15, 1983. 4 C.F.R. 31.5(a) (1993) and the Supplementary Information section of the final rule, 54 Fed. Reg. 51,868 (1989). Thus, unless an individual submitted a claim to this Office or to the appropriate agency before the 6-year period elapsed, the claim on the obligation would be barred.

Prior to CEBA, the effect of the Barring Act was masked because there was no need to make a claim on the obligation underlying an unpaid Treasury check since the check was payable in perpetuity. To illustrate the effect of the Barring Act prior to CEBA, assume an individual held a Treasury check for more than 6 years. While that individual could at any time negotiate the check or obtain a replacement therefor, a claim for an amount different than the face value of the check would be barred since it was not presented within 6 years of the date the claim accrued.

CEBA significantly changed this statutory scheme. CEBA imposed a time limit on claims "on account of a Treasury check" and on the payment of Treasury checks. CEBA changed the statutory scheme by limiting to 1 year the period during which a Treasury check may be paid. Section 3328(a) now states that "[T]he Secretary shall not be required to pay a Treasury check issued on or after the effective date of this section unless it is negotiated to a financial institution within 12 months after the date on which the check was issued."

[1]Section 3328(c) specifically excepts from the Barring Act only those claims arising from an unpaid Treasury check. With respect to a Treasury check that Treasury records show as being paid, prior to CEBA, section 3702(c) had provided that a claim on such check must be presented within 6 years. 31 U.S.C. § 3702(c) (1982).

To parallel the 12-month period on payment of Treasury checks contained in section 3828(a), CEBA also amended section 3702(c)(1) of the Barring Act to bar claims arising from Treasury checks unless presented within 1 year of issuance. Section 3702(c)(1) now states that:

> "Any claim on account of a Treasury check shall be barred unless it is presented to the agency that authorized the issuance of such check within 1 year after the date of issuance of the check or the effective date of the subsection, whichever is later." (Emphasis added.)

The underscored language is very broad in scope, applying not only to the check itself but also to "any claim on account" of a check. In our view, section 3702(c)(1) clearly separates the two causes of action, one based on the Treasury check and one on the underlying obligation, and limits to 1 year the period for submitting any claim on account of a Treasury check. The Department of Treasury's view is the same. The Treasury responded to a comment questioning whether the limitation on negotiability of Treasury checks affected a person's entitlement to payment by stating that "A claim on account of a Treasury check is distinct from a claim on the underlying obligation. The language of 245.3(a) and 245.3(c) is consistent and accurately reflects the statutory language of CEBA." See Treasury's response to the comment submitted on section 245.3 of the final rule implementing CEBA, 54 Fed. Reg. 35,639 at 35,641 (1989).

Thus, the validity beyond 6 years of the obligation underlying a Treasury check does not depend on whether a Treasury check has been issued, as the requestors suggest. Rather it depends on whether a claim for the underlying obligation was timely received either by the Comptroller General or the appropriate agency. 31 U.S.C. § 3702(b) and 4 C.F.R. § 31.5(a).

Effect of Savings Clauses

Requestors rely on CEBA's three disclaimers, or savings clauses, to support their conclusion that the underlying obligation is not affected by the Barring Act. See 31 U.S.C. §§ 3328(a)(3), 3334(c), and 3702(c)(2). In order to preserve the status of the obligation underlying a Treasury check, CEBA added a savings clause at section 3702(c)(2) which states that "[n]othing in this subsection affects the underlying obligation of the United States, or any agency thereof, for which a Treasury check was issued." The same savings clause is used to limit the effect of two other provisions.[2] We have previously concluded that the savings clause preserves a claim for payment but does not resurrect a claim that is otherwise unenforceable. 70 Comp. Gen. 416 (1991).

The language of the savings clause clearly provides that the applicable provisions of CEBA have no affect on the underlying obligation. (Nothing "shall be construed to affect the underlying obligation.") That is, CEBA does not terminate, preserve, or resurrect the obligation underlying a Treasury check, but leaves it as it found it. The preservation or termination of an underlying obligation subject to section 3702(b) continues to be controlled by whether a claim has been received by the Comptroller General or the appropriate agency within 6 years of the date of accrual of the claim. 31 U.S.C. § 3702(b) and 4 C.F.R. 31.5. We find nothing in CEBA that alters this scheme.

As noted above, since prior to CEBA Treasury checks were payable in perpetuity and replacement checks could be obtained for unpaid Treasury checks as a matter of course, the effect of the 6-year limitation on the obligation underlying a check was minimal. 31 U.S.C. § 3328(a) and (c) (1982). However, because CEBA made a significant change in the period of time that a Treasury check was payable, Congress included in CEBA a grace period before Treasury began the mass cancellation of Treasury checks older than 1 year.[3] <u>See</u> Pub. L. No. 100-86, section 1006, set out as a note under 31 U.S.C. § 3328. If, as the requestors suggest, an obligation remains valid and enforceable, notwithstanding the 6-year limitation on claims, the need for a grace period prior to check cancellation is greatly mitigated, if not eliminated.

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[2]Similar savings clauses limit the effect of subsection 3328(a) and section 3334, title 31, United States Code. Section 3328(a) limits the payability of Treasury checks to 1 year. Likewise, the savings clause in subsection 3334(c) is restricted in application to section 3334. Section 3334 directs the Secretary of the Treasury to cancel Treasury checks more than 12 months old and to redistribute the proceeds.

[3]After notice and an 18-month grace period, the Department of the Treasury canceled all unpaid checks issued prior to October 1, 1989. 31 U.S.C. § 3334(b)(1); 54 Fed. Reg. 35,639 (1989). Treasury applied the proceeds of the canceled checks to eliminate the balances in certain Treasury accounts. <u>See</u> 31 U.S.C. § 3334(b)(2).

Effect of 31 U.S.C. § 3328(c)

Requestors' final argument is based on the fact that CEBA did not amend section 3328(c). Section 3328(c) provides that "A limitation imposed on a claim against the United States Government under section 3702 of this title does not apply to an unpaid check drawn on the Treasury or a designated depositary." Requestor interprets section 3328(c) as preserving in perpetuity the enforceability of the obligation underlying a Treasury check. Accordingly, requestors maintain that once a Treasury check is issued, it may be reissued in perpetuity.

We do not agree with this reading. One of the purposes of section 3328(c) as originally enacted was to distinguish unpaid Treasury checks from Treasury checks that the records of GAO or Treasury showed as paid. 31 U.S.C. § 3702(c) (1982). In the latter case, any claim on such a check had to be presented within 6 years after the check was issued. Section 3328(c) thus made clear that unpaid checks were not subject to the 6-year period of limitation on checks shown as having been paid.

Section 3328(c) also served to make clear that the 6-year limitation on the payment of claims based on the underlying obligation does not apply to an unpaid check. As explained earlier, this is entirely consistent with the distinction between a claim on account of the Treasury check and a claim on the underlying obligation found in earlier law and preserved in CEBA. Section 3328(c) says only that a limitation imposed on a claim against the United States under section 3702 does not apply to <u>an unpaid check</u>. Section 3328(c) does not say that a limitation imposed on a claim against the United States does not apply to an unpaid check <u>and</u> its underlying obligation.

This is not to say that Congress's failure to address section 3328(c) is not problematic. As part of the prior statutory structure, section 3328(c) made clear that unpaid checks, payable in perpetuity by virtue of section 3328(a), were not subject to the 6-year limitation on checks shown as paid or to the 6-year limitation on claims on the underlying obligation. 31 U.S.C. §§ 3328(a) and (c), and 3702(b), and (c) (1982). When Congress in CEBA amended sections 3328(a) and 3702(c) to limit payments on account of a Treasury check to 1 year, but failed to amend section 3328(c), it permitted the argument that section 3328(c) was designed to free the obligation underlying the unpaid check from the 6-year time constraint found in section 3702(b) since obviously Congress did not intend to invalidate the 1-year period on the payment of all checks just added by CEBA to section 3702(c). Once again, we think it is important to note that section

3328(c) does not say that the limitation imposed on claims against the United States in section 3702 does not apply to the unpaid check and the obligation underlying it. Given the distinction maintained in sections 3328 and 3702 both before and after CEBA, had Congress intended this latter result we think it would have said so.

CONCLUSION

We affirm the legal conclusion reached in B-244431, October 8, 1991. The opinion stated that underlying obligations are preserved by the savings clauses, but that such clauses do not "resurrect claims that are otherwise unenforceable." That opinion involved claims included in the submission, but not otherwise described in the opinion. The claims on the obligations underlying those Treasury checks were clearly time barred. We have not considered whether the claims underlying the two Treasury checks at issue here are barred. The requestors may pursue this matter with the Defense Finance and Accounting Service to determine whether Motorola and ARKLA, Inc. have submitted timely claims for the obligations underlying the Treasury checks at issue.

for James F. Hinchman

Comptroller General
of the United States