

B-255885

March 11, 1994

George M. Uhrin
Chief, Payroll Accounting, Reports
and Collection Section
Department of the Treasury
Internal Revenue Service
Attention: HR:H:S:R
1111 Constitution Avenue, NW
Washington, D.C. 20224

Dear Mr. Uhrin:

We refer to your letter of November 19, 1993, to our Claims Division, in which you present certain questions pertaining to the settlement of accounts of deceased employees of the Internal Revenue Service (IRS) in accordance with 5 U.S.C. §§ 5582, 5583 (1988).

You state that the IRS has recently converted to a new payroll office and that the National Finance Center is now performing the personnel and payroll functions for the service. The process of phasing out has included disbursement of various duties to the regional and field offices. One such duty is the maintenance of case files for deceased employees, and your questions concern the disposition of those files. The following is presented for your information.

In addition to the order of precedence for beneficiaries of deceased employees in 5 U.S.C. § 5582, there are several other statutory provisions that are applicable to the settlement of estates. For example, the Debt Collection Act of 1982, 5 U.S.C. § 5514 (1982); and Collection and Compromise of Claims of the United States, 31 U.S.C. §§ 3702, 3711, 3716 (1988). Regulations pertaining to the various statutory authorities are set out in 4 C.F.R. Part 31 (1993) (Claims Against the United States); 4 C.F.R. Part 33 (1993) (Deceased Civilian Officers and Employees, Procedures for Settlement of Accounts); 4 C.F.R. Part 102 (1993) (Standards for the Administrative Collection of Claims. In addition, Title 4, GAO Manual for Guidance of Federal Agencies, Chap. 3, supplements our regulations concerning settlement of accounts for deceased civilian

employees. Of course, there is also for consideration provisions of your Treasury Finance Manual.

As to the claims files that are over 6 years old from the date of the deceased's death, you are correct in your contention that such claims are barred from payment, and may be closed out in accordance with your normal procedures.

, B-189525, Oct. 18, 1977; 31 U.S.C. § 3702(b)(1) (1988); 4 C.F.R. § 31.5(a) (1993).

As regards monies owed the IRS, our Office has long held that where an employee is indebted to the United States, the debt may be withheld or collected from final salary payments, lump-sum payments for leave, and retirement contributions or annuities. B-190291, Jan. 3, 1978, and cases cited. A setoff or charge may be made to any amount due from the former employee to the United States, regardless of whether such lump-sum payment is otherwise payable to the former employee, his designated beneficiary, or his estate. 24 Comp. Gen. 522 (1945). In applying such setoff, the provisions of 4 C.F.R. Part 102 should be applied for both the cases that are now time barred, and those cases that are still subject to settlement. Note that there is a 10-year limitation period for the administrative setoff of debts due the United States. 4 C.F.R. § 102.3(b)(3).

As regards IRS's obligation to contact the next of kin, we believe that this is a policy consideration for your Office to make. However, it would seem that principles of fairness and due process would dictate that an agency exercise the same diligence in contacting beneficiaries as it expends in the collection of claims of the United States. See, 4 C.F.R. § 102.1. As to the proper documentation for payment, this Office requires competent evidence in the form of originals or certified true copies of court orders, etc. See, B-173574, Nov. 2, 1971. That is so because claims against the United States are settled on the basis of the facts established by the government agency concerned, and by evidence submitted by the claimant, with the burden of proof upon the claimant to establish such proof. 4 C.F.R. § 31.7. Again, we believe that the quantum of evidence necessary for payment and settlement of accounts should be determined by IRS.

There are also certain instances where our Claims Group will accept responsibility for the settlement of claims for unpaid compensation due deceased employees of the federal government, i.e., (1) when doubt exists as to the amount or validity of the claim; (2) when doubt exists as to the person(s) properly entitled to payment. 4 C.F.R. § 33.6(c). However, a caveat here is that such doubtful claims should be fully documented by the responsible agency before they are sent to this Office since, due to a reduction in person-

nel, this Office does not have the capacity to further develop the record.

As regards your question concerning cases where more than one person is identified as beneficiary, but SF-1153's (Claim of Spouse and/or Designated Beneficiary) are not on file for all persons, your attention is directed to 4 C.F.R. § 33.6. That section provides that when the person(s) otherwise entitled to payment has not submitted a claim and cannot be located within 3 years after the death of the employee, payment shall be made to the person(s) in the same class of entitlement, or in the absence of anyone in the same class, then the person(s) next in order of precedence. See also, B-207143, Dec. 26, 1984.

As to IRS's responsibilities as an employer in cases where the employee died soon after separating from service and a salary check is returned unnegotiated, we believe that this remains the responsibility of IRS since a check issued in payment of a government obligation pursuant to statute or contract does not constitute payment unless and until the check is negotiated. See 33 Comp. Gen. 99 (1953); 4 C.F.R. § 33.9. The amount of the check is unpaid compensation due the decedent. See also, 31 U.S.C. § 3328 (1988); 4 TFM § 7040.

In summary, we believe that most of your questions concerning salary offset and settlement of accounts of deceased government employees can be answered by reference to 4 C.F.R. Parts 33 and 102. However, if you have any further questions concerning settlement, Mr. _____, of my staff has agreed to assist you. He may be reached at _____.

We are enclosing copies of the pertinent regulations and decisions cited to above.

Sincerely yours,

Robert L. Higgins
Associate General Counsel

Enclosures