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UNITED STATES GOVERNMENT

GENERAL ACCOUNTING OFFICE

Memorandum

B-138942-O.M., Aug. 26, 1976

MAY 18 1976

TO : The General Counsel

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FROM : Associate Director, LCD - Henry W. Connor

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SUBJECT: Crediting Collections to Appropriations

Public Law 93-623, 49 U.S.C. 1517 (Fly America) directs travelers to travel on American flag airlines where available. The Comptroller General is given the responsibility to disallow in the absence of proof of necessity in those cases where foreign flag carriers are used.

Our overseas branches have been reviewing implementation of the Act and several questions have been raised. Mr. Barclay's group is handling most of the questions but the following example is for your consideration.

A State Department traveler was authorized to travel from Washington, D. C., to Milan, Italy. That travel could have been performed on American flag airlines at a cost of $386 ($383 plus $3 tax.) The traveler however, wanted to stop in Paris for personal reasons and that required use of a foreign flag carrier from Paris to Milan. That travel cost the State Department the same as the direct travel $386 ($383 plus $3 tax). State Department determined that there was no justification for the use of foreign flag carriers and disallowed $79.37 as a pro rata share of the through fare. The $79.37 was credited back to the State Department's travel funds.

In this case, the State Department would have had to pay the $386 in any event but, because the traveler elected to stop in Paris, collected back from him $79.37. To us this seems to be augmenting the travel appropriation by $79.37.

We understand that past disallowances made by the CG under section 901a of the Merchant Marine Act of 1936, 46 U.S.C. 1241, were credited back to miscellaneous receipts of the Treasury. In any event our question is, "Should the disallowed amount be credited to the agency's appropriation or to miscellaneous receipts?"

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Indorsement

Director, LCD

Returned. As a general rule, collections by Federal agencies from whatever source must be deposited into the Treasury as miscellaneous receipts pursuant to 31 U.S.C. § 484 (1970). However, collections which represent repayments to appropriations are treated differently. Section 1 of Treasury Department-General Accounting Office Joint Regulation No. 1, 7 GAO (Policy and Procedures Manual) App. B, provides:

> "* * * All collections representing repayments to appropriations which have not lapsed, including reimbursements and refunds, will be deposited directly in the accounts of disbursing officers and will accordingly be immediately available for disbursement. * * *"

Section 2(b) of the Joint Regulation defines such repayments to include:

> "Refunds to appropriations which represent amounts collected from outside sources for payments made in error, overpayments, or adjustments for previous amounts disbursed, including returns of authorized advances."

See also, with respect to the treatment of refunds, 7 GAO §§ 13.1 - 13.2. As indicated in 7 GAO § 13.2 "refunds must be directly related to previously recorded expenditures and are reductions of such expenditures."

The so-called "Fly American Act," 49 U.S.C.A. § 1517 (Supp. 1976), provides in part that the Comptroller General "shall disallow any expenditure from appropriated funds" for payment of specified personnel or cargo transportation on air carriers not holding the requisite certificate absent satisfactory proof of the necessity of such transportation. Under the terms of this section, where it is determined that expenditures of appropriations do not meet the requirements stated therein, the expenditures must be viewed as erroneous payments ab initio. It follows that subsequent collections on account of such expenditures constitute refunds of erroneous payments subject to the provisions of the Joint Regulation and GAO Manual discussed above, rather than receipts subject to 31 U.S.C. § 484. Compare 42 Comp. Gen. 619 (1963); 41 id. 806, 807 (1962).

Accordingly, collections received as a result of disallowances under 49 U.S.C. § 1517 should generally be credited to the appropriation from which the erroneous payment was made. See 7 GAO § 13.3. If this appropriation is still available for obligation, the amounts so credited may be used again. If the appropriation has expired for obligation purposes, but has not yet lapsed into successor ("M") account status, the collection would be credited to the obligated appropriation balance. See 31 U.S.C. § 701(c) (1970). If the appropriation has lapsed, the collection would be credited to the applicable "M" account; except that any collections made by GAO in these circumstance could be deposited into the Treasury as miscellaneous receipts. Id.

We recognize that the treatment specified above has an augmenting effect to the extent that collections are credited to still active accounts. However, this result necessarily follows under the applicable procedures. Moreover, the Fly American Act seems to necessarily carry a potential for augmentation even apart from recoveries of erroneous payments. For example, if it is determined prior to an appropriation disbursement that certain transportation did not comply with the Act, the disbursement might simply be withheld, thereby enabling the Government to obtain the benefit of transportation without paying for it.

Paul G. Dembling

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General Counsel

Attachment

APPROPRIATIONS
  Refund of expenditures
    Disposition

TRANSPORTATION
  Overpayments
    Recovery
      Disposition

DEBT COLLECTIONS
  Transportation
    Disposition of collection

MISCELLANEOUS RECEIPTS
  Special account v. miscellaneous receipts
    Refunds of erroneous payments
      Air carriers