COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-162639 400608 October 12, 1973

The Honorable
The Secretary of the Treasury

Dear Mr. Secretary:

By letter dated February 9, 1973, the Assistant Secretary for Administration requested our decision whether appropriations made to the Internal Revenue Service (IRS) are available to reimburse the Department of State for provision of medical services to IRS overseas employees and their dependents.

The Assistant Secretary's letter to us states in part:

> "Under authority of the Foreign Service Act of 1946, the State Department provides a program of health services to American employees who are serving abroad and to their dependents. The State Department has entered into formal agreements with a large number of agencies performing overseas functions to extend these services to their employees on a reimbursable basis. IRS is very anxious to extend these services to its overseas employees and their dependents so that the benefits of health protection and good medical care can be provided to its employees throughout the world regardless of the remote location or poor health conditions of the area to which assigned."

We have been furnished a copy of sections 681.1-682.2-1 of the Uniform State/AID/USIA Regulations, which govern the medical and health program referred to above. This program, based upon several sections of the Foreign Service Act of 1946, as amended, 22 U.S.C. 911, 912, 1156-58, provides for medical services to Foreign Service employees and their dependents, and—

> "* * * when authorized by appropriate legislation and in keeping with specific administrative agreements, to those American citizen Federal employees assigned or to be assigned abroad by other U.S. Government agencies and to their eligible dependents."

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Section 681.1(a) of the regulations lists those Federal departments and agencies which participate in the program.

The Assistant Secretary's letter indicates that no legislation exists which would expressly authorize IRS to make expenditures in connection with participation in the State Department program. However, it is suggested that such expenditures may be considered "necessary expenses" of IRS, and thus within the application of appropriations made to the Service for that object. In this connection, the Assistant Secretary states:

> "* * * These services will directly benefit the Service by treating and alleviating medical problems in the early stages of development, obviating the necessity of relieving or replacing overseas employees when medical problems have become so serious as to incapacitate them and require their hospitalization or return to the United States. It will also assist the Service to recruit and retain the competent key personnel necessary to conduct its activities and administer its programs abroad. Additionally, the fact that so many agencies pay for these benefits would indicate common acceptance that such expenditure is a 'necessary expense.'"

Numerous decisions of our Office concerning the furnishing of medical treatment to civilian employees of the Government--except for illness directly resulting from the nature of their employment--have expressed the general rule that medical care and treatment are personal to the employee, and that payment therefor may not be made from appropriated funds unless provided for in a contract of employment or by statute or valid regulation. See, e.g., 47 Comp. Gen. 54, 55 (1967); 41 id. 531, 532-33 (1962); id. 387, 388 (1961), and decisions cited therein. We must conclude that this general rule precludes the use of IRS appropriations to make reimbursement for the services contemplated.

As noted previously, there exists no specific statutory authority applicable to IRS which could be treated as establishing an exception to the general rule. Certainly an appropriation for "necessary expenses" is not sufficient in this respect. In addition we might note that our decisions have themselves recognized an exception to the general rule where the provision of limited medical services may be regarded as being for the principal benefit of the Government rather than the employee. However these decisions relate primarily to the provision of diagnostic and precautionary services such as examinations and innoculations made necessary by particular conditions or requirements of employment, and are not here applicable. The State Department regulations described

previously do not constitute an independent source of authority for participation in the medical and health program but, on the contrary, provide for such participation only "when authorized by appropriate legislation * * *." As stated above, there appears to be no such legislation in the case of IRS.

Finally, the Assistant Secretary suggests that the fact that so many agencies participate in the program indicates a common acceptance of such expenditures as "necessary expenses." A cursory examination of the authorities applicable to departments and agencies which now participate in the State Department program indicates in some instances statutory provisions which specifically authorize such use of appropriated funds. See, for example, 15 U.S.C. 1514(a) (Department of Commerce), 49 U.S.C. 1657(1) (Department of Transportation), and Public Law 92-342, 86 Stat. 432, 446 (Library of Congress). The authority for provision of such services to Foreign Service employees is, of course, specifically set forth in 22 U.S.C. 1156-1158.

We have not sought to identify specific sources of authority applicable to each agency which participates in the State Department program. However, in view of the provisions cited above, we fail to perceive a common acceptance of the position that payment of medical expenses for employees may be made as a "necessary expense" without further authority. On the other hand, the foregoing provisions--as well as a number of other statutory provisions authorizing in particular circumstances the furnishing of medical services to Government employees--indicate that where such authority is deemed appropriate by the Congress it is provided in specific terms and is subject to specific limitations. See 5 U.S.C. 7901; 16 U.S.C. 13; 33 U.S.C. 763c; 42 U.S.C. 253-253a.

For the reasons stated herein, it is our opinion that appropriations made for necessary expenses of IRS are not available for furnishing health and medical services to IRS employees stationed overseas under the State Department program.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States