



**The Comptroller General
of the United States**

Washington, D.C. 20548

Martin-Rolky

Decision

Matter of: Acceptance of Payment by Commercial Credit Card

File: B-177617

Date: November 6, 1987

DIGEST

1. Except where prohibited by statute, agencies may accept commercial credit card transactions in payment for amounts owed to the United States, subject to certain safeguards. However, where the Miscellaneous Receipts Act (31 U.S.C. § 3302(b) (1982)) applies, credit card company commissions must be paid from the agency's current operating appropriations, rather than be deducted from the proceeds of the credit card transaction itself.

2. Under 16 U.S.C. § 4601-6a(f) (1982), the Department of Agriculture (USDA) may allow credit card companies to deduct their commissions from the proceeds of commercial credit card transactions charged to the public for "reservation services." However, without additional statutory authority, commissions on credit card transactions for other kinds of USDA services or fees must be paid from current operating appropriations.

DECISION

The Assistant Secretary for Natural Resources and Environment, United States Department of Agriculture (USDA), requested our opinion regarding the acceptance of commercial credit card transactions in payment for amounts owed to the government by private individuals and organizations. Because the credit card companies usually deduct their fee from the amount charged to the credit card holder, USDA questions whether accepting credit card transactions would violate the so-called "Miscellaneous Receipts Act," 31 U.S.C. § 3302(b) (1982).

USDA is authorized by the Land and Water Conservation Act, as amended, 16 U.S.C. §§ 4601, 4601-6a (1982), to assess and collect a variety of fees and permit charges. Previously, USDA has been willing to accept only cash payments for those fees and permit charges. Now, however, USDA wants to offer

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credit card transactions as an alternative method of payment for "user fees collected at recreation sites" and for "firewood, Christmas tree permits, special use permits, and similar authorized uses and products from the National Forest System Lands." According to USDA, in fiscal year 1985, sales to the public of just three of those classes of permits amounted to approximately \$320,000. Aside from the fact that purchasers frequently request to pay via credit card as a convenience to them, USDA believes that the acceptance of credit card transactions would significantly reduce USDA's administrative costs and increase its efficiency.

We conclude that, in the absence of an express statutory prohibition, an agency may legally accept payment of amounts owed to the United States in the form of commercial credit card transactions. However, where 31 U.S.C. § 3302(b) applies, credit card company commissions may not be deducted from the proceeds of the transactions, and to this extent, the use of commercial credit cards may not offer a practical alternative under existing law.

Authority to Accept Payment by Credit Card

We have previously held that agencies may accept commercial credit card transactions in payment for goods and services provided by the government, except where credit sales are expressly prohibited. 56 Comp. Gen. 90 (1976); 52 Comp. Gen. 764 (1973). In those cases, we observed that "while the government does not ordinarily provide goods or services on credit, there is no general statutory prohibition against credit sales." 56 Comp. Gen. at 91 (citing 52 Comp. Gen. at 765). Those decisions were "premised on the [agency's] representation that this practice would facilitate sales without [significantly] increasing administrative costs or prices charged to customers." Id. Allowing the use of credit card sales was expected to enhance the agencies' performance of their statutory functions by enabling them to operate more efficiently and conveniently. Finally, the interests of the United States were adequately protected by credit card company guarantees to pay for purchases made by duly accepted credit cards. 56 Comp. Gen. at 92; 52 Comp. Gen. at 765.

We see no reason why the principle enunciated in those two decisions should not apply equally to the payment of any and all amounts owed to the United States, subject to the same safeguards. Acceptance of payment by credit card should not result in significant increases in the cost to the government, or any increase in the cost to the person

making the payment;^{1/} should adequately protect the government's interest by means of credit card company guarantees to reimburse the government for all properly conducted credit card transactions; and should facilitate and enhance performance of the agency's program and collection responsibilities. If these conditions apply, then agencies may exercise sound discretion to accept credit card transactions as an additional (and optional) means of paying amounts owed to the United States. (We do not believe that agencies may require payments to be made by credit cards.)

Deducting Credit Card Company Commissions from Proceeds

Credit card companies normally charge a fee of 3 to 5 percent of the transaction amount. As USDA notes, the companies customarily collect this fee by deducting it from the amount to be paid to the vendor (i.e., the agency). Because of this, as explained below, the use of commercial credit cards may not be a feasible option under existing law.

The problem is that, under 31 U.S.C. § 3302(b), unless otherwise provided by law, each agency is generally required to deposit into the general fund of the Treasury all amounts received by its officers and agents, "without deduction for any charge or claim." Thus, where this act applies, the agency has no authority to allow a credit card company to deduct its commissions from payment made via credit card, unless there is some other express statutory

^{1/} The requirement that there be no additional cost to the payor does not apply to payments made on delinquent debts owed the United States. Agencies are required to assess administrative charges to cover the costs of processing and handling delinquent debts. 31 U.S.C. § 3717(e)(1) (1982); 4 C.F.R. § 102.13(d) (1986). Neither the statute nor the implementing regulations itemize all of the elements that may be assessed as administrative costs. See 49 Fed. Reg. 8889, 8893 (1984). If an agency chooses to permit payment of delinquent debts by credit card, we think the agency may treat the credit card company's commission as an administrative cost to be assessed against the debtor--in the same manner as the cost incurred in using a private debt collector, etc. However, the agency should disclose this liability to the debtor when the credit card option is offered.

authority to do so.^{2/} USDA suggests that the necessary authority may be found in two specific (and otherwise unrelated) statutory exceptions to the miscellaneous receipts act--31 U.S.C. § 3718(d) (1982) (debt collection contractor fees), and 16 U.S.C. § 4601-6a(f) (1982) (reservation service contractor fees).

1. Debt Collection Contractor Fees.

The provisions of 31 U.S.C. § 3718(d) (formerly § 3718(b), as redesignated by Pub. L. No. 99-578, § 1, 100 Stat. 3305 (1986)), create an express exception to the Miscellaneous Receipts Act in order to authorize agencies to pay debt collection contractor fees by means of deductions from collection proceeds. USDA admits that "the language employed in 31 U.S.C. § 3718 tends to indicate that the use of credit cards was not contemplated specifically [by Congress when this law was enacted]" Nevertheless, USDA argues:

". . . Even if a contract with credit card issuers and vendors cannot meet the literal language of 31 U.S.C. § 3718, clearly, Congress intended to give the head of an agency wide latitude to his choice of collection mechanisms. Allowing the use of credit cards for payments would appear to be in keeping with this Congressional intent."

To the extent that the amounts being paid via credit card represent the payment of delinquent debts, we agree that the provisions of section 3718(d) would authorize deductions for credit card company commissions. However, if those amounts represent payments on non-delinquent debts, the exemption (from the Miscellaneous Receipts Act) in section 3718(d) would not apply. This conclusion follows from a previous decision of this Office to the effect that section 3718(d) does not apply to the collection of non-delinquent debts, or to "account servicing," etc. 64 Comp. Gen. 366 (1985).

2. Reservation Service Contractor Fees.

The provisions of 16 U.S.C. § 4601-6a authorize USDA to assess a variety of "Admission and special recreation use fees." (USDA calls these assessments "user fees collected at recreation sites.") Paragraph (a) of that section

^{2/} The effect of 31 U.S.C. § 3302(b) was not an issue in 52 Comp. Gen. 764 and 56 Comp. Gen. 90, cited earlier, because of the particular statutory authorities involved in those cases.

concerns "Admission fees" and various "permits;" paragraph (b) concerns "Recreation use fees" and "fees for Golden Age Passport Permittees;" and paragraph (c) concerns "Special Recreation Permits." Paragraph (f) is entitled "Disposition of fees; contracts with public or private entities for visitor reservation services." It reads, in pertinent part, as follows:

"Except as otherwise provided by law . . . all fees which are collected by any Federal agency [pursuant to this section] shall be covered into a special account in the Treasury of the United States to be administered in conjunction with, but separate from, the revenues in the Land and Water Conservation Fund; Provided, that the head of any Federal agency, under such terms and conditions as he deems appropriate, may contract with any public or private entity to provide visitor reservation services; and any such contract may provide that the contractor shall be permitted to deduct a commission to be fixed by the agency head from the amount charged to the public for providing such services and to remit the net proceeds therefrom to the contracting agency. Revenues in the special account shall be available for appropriation . . . for any authorized outdoor recreation function of the agency by which the fees were collected" 16 U.S.C. § 4601-6a(f) (added by Pub. L. No. 93-303, § 1(j), 88 Stat. 192, 194 (1974)). (Emphasis added.)

Clearly, paragraph 4601-6a(f) authorizes USDA to enter into contracts with public or private entities in order to obtain "reservation services" and allows those contractors to deduct their commissions for providing these services from fees that they collect on behalf of the government. Thus, this provision would authorize credit card companies to deduct commissions from receipts. However, by its very terms, it applies only with respect to amounts charged to the public for reservation services; it does not authorize deductions from the fees assessed pursuant to paragraphs (a), (b), or (c) of section 4601-6a.3/

3/ The legislative history of this provision confirms this interpretation. In H.R. Rep. No. 1076, 93rd Cong., 2d Sess. 5 (1974), for example, it was explained that:

"Under existing law all fees go into a special account in the Land and Water Conservation Fund to the credit of the collecting agency. No change is
(continued...)

The first sentence of 16 U.S.C. § 4601-6(f), quoted above, requires that all fees collected under the authority of § 4601-6a be deposited in a special account in the Treasury. Thus, except for the special provision for reservation services, there would be no authority to deduct credit card company commissions from these other fees.

Of course, none of the foregoing discussion is intended to suggest that credit card companies may not be paid a commission on amounts which are charged for credit to the government for the other kinds of fees and charges provided in section 4601-6a. We are saying merely that without additional statutory authority, that commission must be paid out of the agency's current appropriations and not by deduction from the amount charged.

CONCLUSIONS

We conclude that, in the absence of express statutory prohibition, agencies may, in the exercise of sound discretion, legally accept commercial credit card transactions in payment of amounts owed to the United States, including amounts owed for goods and services, and amounts owed on account of delinquent and non-delinquent debts. However, we also conclude that, without express statutory authority to do so, agencies may not allow credit card companies to collect their commissions by means of deductions from amounts charged for credit to the United States.

We think payment by credit card is a desirable option which may facilitate the administration of some government programs presently operated on a cash basis. At the very least, it should be available to federal agencies, subject to the exercise of sound discretion. Under existing law, however, an agency wishing to accept credit card transactions for payments subject to 31 U.S.C. § 3302(b) (or other similar statutory restriction) has basically two options:

3/ (...continued)

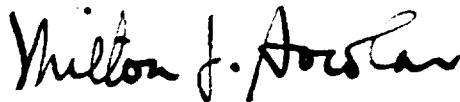
made in this respect, but the bill makes clear that the Secretary may contract for reservation services and that the charge imposed for making such reservation need not be paid into the special account. While the proceeds for camping use would be the same, this language is designed to eliminate transfers of funds for providing reservation services." (Emphasis added.)

(1) The agency may try to negotiate an agreement whereby the credit payment is paid over to the agency in its entirety for credit to the appropriate account, with the agency paying the contractor's commission from current appropriations in a separate transaction; or

(2) The credit card company may deduct its commission from amounts to be paid to the government agency, with the agency then promptly transferring the amount of the fee from current appropriations to the account to which the payment is to be credited.

The first option may not be acceptable to the credit card company; the second is somewhat impractical and administratively burdensome.

Accordingly, to enable agencies to realize the maximum potential benefit from credit card transactions, we would support legislation (perhaps along the lines of 31 U.S.C. § 3718(d)) to establish an exemption from 31 U.S.C. § 3302(b) for credit card arrangements.

for 
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