



**DIGEST - I - BGM**  
 UNITED STATES GENERAL ACCOUNTING OFFICE  
 WASHINGTON, D.C. 20548

106

*B-196052-O.M., Jan. 7, 1980*

CLAIMS DIVISION

SEP 12 1979

*Released*

z-2815225

*D*

The Comptroller General

We are forwarding the claim of [redacted], who represents her father, [redacted]. [redacted] donated \$19,000 by cashier's check to the Internal Revenue Service. Subsequently, the IRS was advised that [redacted] was suffering a mental condition described as "flat inappropriate affect, loose autistic thinking with some paranoid ideation" and diagnosed as "schizophrenic reaction, chronic undifferentiated type."

[redacted] seeks return of the funds, alleging that her father's mental state precluded him from forming the requisite intent to make a gift at the time he conveyed the check. She contends that the money constituted the major part of [redacted] life savings and that his act has left him in a financially desperate situation. The Department of the Treasury, Bureau of Government Financial Operations, has no objection to the return of the funds. However, we are submitting it to your Office because we can find no authority to support return of the funds to [redacted].

*[Signature]*

Chief, Payment Branch

79

B-196052- O.M.

Indorsement

JAN 7 1980

Director, Claims Division

Returned. The Bureau of Government Financial Operations (BGFO) ~~originally characterized the remittance as a gift.~~ When we inquired what the basis was for that characterization, the BGFO located a letter from [redacted], which had accompanied the remittance, and in which [redacted] said that he had cheated the Government out of the money over twenty-three years. Treasury apparently takes the position that remittances such as this which cannot be identified with a specific tax liability must be treated as gifts to the United States. Furthermore, according to Treasury, such remittances are put in the "Conscience Fund" and cannot be returned, barring an appropriation or a determination that the donor was incompetent to make the remittance. [redacted] contends in effect

that [REDACTED] was mentally incompetent at the time he made the remittance and hence was incapable of forming the intent necessary to make a valid gift.

The General Accounting Office cannot make a determination of [REDACTED] competency at the time payment to IRS was made. Further, if [REDACTED] is presently incompetent GAO would be without authority to make refund of the \$19,000 to anyone other than a duly appointed legal guardian or representative. The issue of competency must be resolved by a court of competent jurisdiction, B-191904<sup>4</sup>, July 19, 1978. Accordingly, the claim must be denied unless or until such a finding of incompetency is made and (if the incompetency still exists) a legal representative or guardian appointed.

MILTON J. SOCOLAR

Milton J. Socolar  
General Counsel