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B-107826 July 29, 1954

Number: B-107826

Date: 1954-07-29

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The Administrator of General Services

General Services Administration

Dear Mr. Administrator:

Attention is invited to the discount terms appearing on page 2, opposite article 3(b), Standard Forms 30 and 33, 1949 Edition, prescribed by the General Services Adminstration, as follows:

" In connection with any discount offered, time will be computed from date of delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when delivery and acceptance are at either of those points, or from date correct invoice or voucher (properly certified by the Contractor) is received in the office specified by the Government if the letter date is later than the date of delivery."

The stipulation above-quoted also appears on GSA FORM 281b, prescribed March, 1951, by the General Services Administration in connection with purchases under the Federal Supply Schedule.

In its interpretation of the quoted previation, this office consistently has held that the date of issuance and mailing of the Government's check in payment of the contractor's invoice constitutes the date of payment for discount purposes. See 18 Comp. Gen. 155; 31 Comp. Gen. 260. Thus, the discount is considered by this Office as having been earned by the Government specified and, generally, without regard to the date on which it is received by the payee.

However, your attentionis invited to the recent decision of the United States Court of Claims in the case of The Foster Company, Inc. v. United States, No. 50445, Decided May 4, 1954, involving the interpretation of a discount clause similar to that quoted above. In that case the Court held that even though the Government checks issued in payment of the contractor's invoices had been mailed within the 10-day discount period specified in the contracts there involved, since they were not actually received by the payee within that time the discounts deducted in connection therewith were not earned by the Government and, consequently, were for refund to the contractor. The attitude of the Court on the issue of what actually constitutes payment for discount purposes is summarized in the following statement in its decision:

"If it is not practicable for it [the Government] to send its payments so that, in the regular course of the mail, they will reach its creditors within ten days, it must stipulate in its contracts for a longer discount period." (Underscoring supplied.)

By an order issued June 6, 1954, the Court of Claims denied the Government's motion for a reconsideration of the case upon its merits.

Since the Court's decision represents a judticial precedent precisely in point on the question, the position of this Office to the effect that the date of issuance and mailing of the Government's check constitutes the date of payment for discount purposes is no longer tenable. Thus, it will be necessary to make refunds of discounts in cases wherein the claimants are able to prove that the checks issued in payment of their invoices were not mailed sufficiently in advance to assure their receipt by the payees, in the regular course of the mails, on or before the final discount date.

In view thereof, and for the purpose of clarifying a somewhat controversial issue which, until recently, had not been finally adjudicated by competent legal authority, this Office recommends, pursuant to your Supplement No. 1 to Federal Supply Service Circular No. 13, issued September 1, 1950, that the standard discount clause appearing on Standard Forms Nos. 30 and 33, GSA Form 281b, or other bid forms prescribed by the General Services Administration in connection with the procurement of supplies or nonpersonal services on behalf of the Government, be amended by adding a sentence reading, in substance: "The date of mailing of the Treasury check will be considered the date of payment."

An expression of your views on the proposed change will be appreciated.

Sincerely yours,

FRANK H. WEITZEL Acting Comptroller General of the United States