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B-120737, Dec 27, 1954

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THE SECRETARY OF THE TREASURY:

REFERENCE IS MADE TO THE LETTER DATED JULY 2, 1954, FROM THE FISCAL ASSISTANT SECRETARY, PRESENTING SEVERAL QUESTIONS CONCERNING THE ADJUSTMENT OF LOSSES DUE TO THE NONCOLLECTION OF CHECKS CASHED FOR ACCOMMODATION UNDER THE PROVISIONS OF PUBLIC LAW 554, 78TH CONGRESS, APPROVED DECEMBER 23, 1944, 58 STAT. 921, AS AMENDED 50 U.S.C. APP. 1705- 1707.

IT IS STATED IN THE SAID LETTER THAT, PURSUANT TO THE AUTHORIZATION CONTAINED IN SECTION 2 OF PUBLIC LAW 61, 83D CONGRESS, APPROVED JUNE 16, 1953, 67 STAT. 62 - WHICH ACT WAS MADE PERMANENT BY PUBLIC LAW 442, 83D CONGRESS, APPROVED JUNE 29, 1954, 68 STAT. 322 - THE ACCOUNT "2046763 GAINS AND DEFICIENCIES ON EXCHANGE TRANSACTIONS, TREASURY, 1954" HAS BEEN ESTABLISHED IN ORDER TO RECORD GAINS AND LOSSES ARISING FROM TRANSACTIONS UNDER SAID ACT DURING FISCAL YEAR 1954. THE FOLLOWING QUESTIONS ARE PRESENTED IN CONNECTION WITH THE OPERATION OF THIS ACCOUNT:

1. WHERE AN INSTRUMENT IS CASHED AS AN ACCOMMONDATION TRANSACTION IN ONE FISCAL YEAR AND IS PROVED TO BE UNCOLLECTIBLE AND IS RECHARGED AS SUCH IN THE DISBURSING OFFICER'S ACCOUNTS IN A SUBSEQUENT FISCAL YEAR, WHICH OF THE FOLLOWING DATES SHOULD GOVERN IN DETERMINING THE FISCAL YEAR OF THE ACCOUNT CHARGEABLE WITH THE DEFICIENCY, ASSUMING THAT SUCH DATES FALL WITHIN DIFFERENT FISCAL YEARS: (A) DATE CHECK WAS CASHED; (B) DATE UNCOLLECTIBLE CHECK WAS RECEIVED FROM THE BANK AND RECHARGED IN THE DISBURSING OFFICER'S ACCOUNT; (C) DATE DETERMINATION IS MADE THAT THE ITEM IS PROPER FOR CHARGING TO THE TREASURY GAINS AND DEFICIENCIES ACCOUNT?

2. WHERE A CHECK WAS CASHED ON MAY 21, 1952, AS AN ACCOMMODATION TRANSACTION FOR AN EMPLOYEE OF THE DEPARTMENT OF STATE AND SUBSEQUENTLY WAS FOUND TO BE UNCOLLECTIBLE AND RECHARGED IN THE DISBURSING OFFICER'S AUGUST 1952 ACCOUNT IS THE AMOUNT THEREOF PROPERLY CHARGEABLE TO THE GAINS AND DEFICIENCIES ACCOUNT ESTABLISHED UNDER PUBLIC LAW 61 OR TO AN APPROPRIATION OF THE DEPARTMENT OF STATE?

3. IF A COLLECTION IS MADE COVERING A TRANSACTION AFTER JUNE 16, 1953, SHOULD THE AMOUNT COLLECTED BE CREDITED TO THE ACCOUNT FOR THE FISCAL YEAR IN WHICH THE TRANSACTION OCCURRED OR THE FISCAL YEAR IN WHICH THE COLLECTION IS MADE?

SECTION 2 OF PUBLIC LAW 61, SUPRA, AUTHORIZES THE HEADS OF AGENCIES HAVING JURISDICTION OVER DISBURSING OFFICERS TO APPLY, ON A FISCAL YEAR BASIS, GAINS IN THE ACCOUNTS OF DISBURSING OFFICERS RESULTING FROM OPERATIONS UNDER THE ACT

AGAINST DEFICIENCIES IN SUCH ACCOUNTS RESULTING FROM SUCH OPERATIONS. THE ACT FURTHER AUTHORIZES THE APPROPRIATION OF SUCH AMOUNTS AS MAY BE NECESSARY TO ADJUST THE NET DEFICIENCY RESULTING FROM THE OPERATIONS UNDER THE ACT. THE ANSWER TO QUESTION 1 DEPENDS UPON WHEN A CHECK BECOMES A DEFICIENCY IN A DISBURSING OFFICER'S ACCOUNTS WITHIN THE MEANING OF THE ACT. IT IS CONCLUDED THAT THE SUBSEQUENT DISHONORING OF A CHECK BY THE BANK UPON WHICH IT IS DRAWN DOES NOT RENDER SUCH CHECK A DEFICIENCY IN THE ACCOUNT AS OF THE DATE IT WAS CASHED BY THE DISBURSING OFFICER, SINCE, PRIOR TO THE DISHONORING, THE CHECK REPRESENTS CASH IN THE ACCOUNT. HOWEVER, AFTER THE CHECK IS DISHONORED AND RETURNED TO THE CASHING DISBURSING OFFICER FOR CHARGING TO HIS ACCOUNT, THE ACCOUNT HAS NEITHER THE CASH NOR A VALID SUBSTITUTE THEREFOR AND, HENCE, THERE IS A DEFICIENCY THEREIN AT THAT TIME DUE TO OPERATIONS UNDER THE ACT. CF. 27 COMP. GEN. 211; ID. 663; AND B-82108, JANUARY 17, 1949. IT IS NOTED THAT THIS INTERPRETATION CONCURS WITH THAT EXPRESSED IN PARAGRAPH 19 OF TREASURY DEPARTMENT CIRCULAR 830 DATED DECEMBER 17, 1953 - THE REGULATIONS ISSUED BY THE TREASURY DEPARTMENT UNDER THE AUTHORITY OF 50 U.S.C. APP. 1707 - WHEREIN THE DISBURSING OFFICER IS REQUIRED TO REPORT PROMPTLY AS A DEFICIENCY THE AMOUNT OF ANY INSTRUMENT TAKEN AS A RESULT OF AN ACCOMMODATION TRANSACTION WHICH IS RETURNED BECAUSE OF DISHONOR, FRAUDULENT NEGOTIATION, OR OTHER REASON. ACCORDINGLY, THE FISCAL YEAR OF THE ACCOUNT CHARGEABLE WITH THE DEFICIENCY IS THAT IN WHICH THE DISHONORED CHECK IS RETURNED BY THE BANK AND RECHARGED IN THE DISBURSING OFFICER'S ACCOUNT, THAT IS, DATE (B).

THE SPECIFIC EXAMPLE PRESENTED UNDER QUESTION 2 RELATES TO A $450 PERSONAL CHECK OF A STATE DEPARTMENT EMPLOYEE, DRAWN ON A UNITED STATES BANK UNDER DATE OF MAY 21, 1952, IN FAVOR OF THE TREASURER OF THE UNITED STATES, WHICH WAS PRESENTED TO AND CASHED BY THE UNITED STATES DISBURSING OFFICER AT KARACHI, PAKISTAN, AS AN ACCOMMODATION UNDER THE AUTHORITY OF PUBLIC LAW 554, SUPRA. THE CHECK SUBSEQUENTLY WAS DISHONORED AND RECHARGED IN THE AUGUST 1952 ACCOUNTS OF THE DISBURSING OFFICER, SYMBOL 99-577. THE DEPARTMENT OF STATE WAS UNABLE TO COLLECT FROM THE DRAWER OF THE CHECK AND THE MATTER WAS REFERRED TO THE GENERAL ACCOUNTING OFFICE FOR COLLECTION AND THENCE TO THE DEPARTMENT OF JUSTICE, WHICH SECURED A DEFAULT JUDGMENT ON DECEMBER 23, 1953. THE DISBURSING OFFICER CHARGED THE AMOUNT INVOLVED, $450, AS A DEFICIENCY TO THE ACCOUNT "2046763 GAINS AND DEFICIENCIES ON EXCHANGE TRANSACTIONS, TREASURY, 1954" IN HIS DECEMBER 1953 ACCOUNTS. THE LIGHT OF THE ANSWER TO THE FIRST QUESTION, IT IS CLEAR THAT THIS CHECK CONSTITUTED A DEFICIENCY IN THE DISBURSING OFFICER'S ACCOUNT WHEN IT WAS DISHONORED AND RECHARGED IN HIS ACCOUNTS, THAT IS, IN AUGUST 1952. SINCE PUBLIC LAW 61 HAD NOT BEEN ENACTED AT THAT TIME, THE AMOUNT WAS NOT PROPERLY CHARGED TO THE GAINS AND DEFICIENCIES ACCOUNT SUBSEQUENTLY ESTABLISHED BY THAT ACT. HOWEVER, IT HAS BEEN ASCERTAINED THAT THE JUDGMENT HAS NOW BEEN COLLECTED. THEREFORE, THE DEFICIENCY CAN BE OFFSET BY THE AMOUNT COLLECTED. WHILE THE SUM COLLECTED WAS INADVERTENTLY DEPOSITED BY THE CLERK OF COURT TO THE CREDIT OF "MISCELLANEOUS RECEIPTS, FINES, PENALTIES, AND FORFEITURES," ACTION IS BEING INSTITUTED WITH A VIEW TO TRANSFERRING THE AMOUNT OF THE DISHONORED CHECK THEREFROM AND DEPOSIT IT TO THE CREDIT OF THE GAINS AND DEFICIENCIES ACCOUNT, THUS, IN EFFECT, CANCELLING THE ERRONEOUS CHARGE. YOU WILL BE ADVISED UPON COMPLETION OF SUCH ACTION.

WHILE THE COLLECTION OF AN ITEM PREVIOUSLY CHARGED TO THE GAINS AND DEFICIENCIES ACCOUNT AS PRESENTED IN QUESTION 3 IS NOT PROPERLY A "GAIN" IN A DISBURSING OFFICER'S ACCOUNT RESULTING FROM OPERATIONS UNDER THE ACT IN THE FISCAL YEAR IN WHICH IT IS COLLECTED, BUT RATHER CONSTITUTES A REDUCTION OF A PREVIOUS DEFICIENCY IN THE ACCOUNT RESULTING FROM SUCH OPERATIONS IN A PRIOR FISCAL YEAR, IT DOES NOT APPEAR THAT THE REOPENING OF CLOSED ACCOUNTS TO RECORD SUCH

REDUCTION WOULD SERVE ANY USEFUL PURPOSE. MOREOVER, IT IS BELIEVED THAT IN THE LONG RUN SUCH ITEMS WILL OFFSET ONE ANOTHER; THAT IS, COLLECTIONS CREDITED IN FISCAL YEAR 1954 BUT PROPERLY ATTRIBUTABLE TO DEFICIENCIES CHARGED IN PRIOR FISCAL YEARS WILL BE OFFSET BY COLLECTIONS CREDITED IN FISCAL YEAR 1955 BUT PROPERLY ATTRIBUTABLE TO DEFICIENCIES CHARGED IN FISCAL YEAR 1954, ETC. ACCORDINGLY, COLLECTIONS OF ITEMS PREVIOUSLY CHARGED IN THAT ACCOUNT AS DEFICIENCIES MAY BE CREDITED TO THE FISCAL YEAR ACCOUNT IN WHICH THE COLLECTION IS MADE REGARDLESS OF THE FISCAL YEAR IN WHICH THE DEFICIENCY WAS CHARGED.