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B-146223, Nov. 27, 1961

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B-146223, NOV. 27, 1961

TO THE SECRETARY OF THE TREASURY:

ON NOVEMBER 7, 1961, THE ACTING ASSISTANT SECRETARY OF THE TREASURY SUBMITTED THE FOLLOWING FOR OUR CONSIDERATION AND DECISION.

THERE ARE NOW PENDING BEFORE THE BUREAU OF CUSTOMS A NUMBER OF INFORMER CLAIMS FOR AWARDS OF COMPENSATION IN CONNECTION WITH FORFEITED MERCHANDISE (LIQUOR) DELIVERED TO NON-FEDERAL INSTITUTIONS. AWARDS TO INFORMERS ARE PROVIDED FOR BY SECTION 619 OF THE TARIFF ACT OF 1930, AS AMENDED, 19 U.S.C. 1619, WHICH READS IN PERTINENT PART AS FOLLOWS:

"* * * IF ANY VESSEL, VEHICLE, MERCHANDISE, OR BAGGAGE IS FORFEITED TO THE UNITED STATES, AND IS THEREAFTER, IN LIEU OF SALE, DESTROYED UNDER THE CUSTOMS OR NAVIGATION LAWS OR DELIVERED TO ANY GOVERNMENTAL AGENCY FOR OFFICIAL USE, COMPENSATION OF 25 PERCENTUM OF THE APPRAISED VALUE THEREOF MAY BE AWARDED AND PAID BY THE SECRETARY OF THE TREASURY UNDER THE PROVISIONS OF THIS SECTION, BUT NOT TO EXCEED $50,000 IN ANY CASE.'

THE SPECIFIC QUESTION IS WHETHER THE UNDERSCORED WORDS "DELIVERED TO ANY GOVERNMENTAL AGENCY FOR OFFICIAL USE," WILL PRECLUDE PAYMENT OF THESE AWARDS WHERE THE SEIZED MERCHANDISE HAS BEEN DONATED TO STATE GOVERNMENTAL AGENCIES PURSUANT TO REGULATIONS PROMULGATED BY THE GENERAL SERVICES ADMINISTRATION.

THE QUOTED LANGUAGE WAS ADDED TO THE TARIFF ACT OF 1930 BY PUBLIC LAW 238 OF THE 74TH CONGRESS, 49 STAT. 527. PUBLIC LAW 238 ORIGINATED AS H.R. 7980, 74TH CONGRESS.

THE DEBATES ON H.R. 7980 DO NOT GIVE ANY INFORMATION AS TO THE MEANING OF THE LANGUAGE IN QUESTION. THE FOLLOWING LANGUAGE, TAKEN FROM HOUSE REPORT NO. 868, 74TH CONGRESS, 1ST SESSION 11-12--- WHICH IS REPEATED VERBATIM IN SENATE REPORT NO. 1036 OF THE SAME CONGRESS--- AFFORDS THE ONLY LEGISLATIVE HISTORY THAT WE HAVE BEEN ABLE TO FIND ON THE QUOTED LANGUAGE.

"SECTION 305 (A) AMENDS SECTION 619 OF THE TARIFF ACT OF 1930 WHICH PROVIDES FOR THE AWARD OF COMPENSATION TO INFORMERS IN FORFEITURE CASES UNDER THE CUSTOMS LAWS. THE COMPTROLLER GENERAL HAS HELD THAT IN A SMUGGLING CASE, IF THE FORFEITURE IS ACTUALLY MADE UNDER NAVIGATION LAW (MANY OF THE NAVIGATION LAWS ARE IN PART OR IN WHOLE INTENDED AS REVENUE PROTECTIVE MEASURES), THERE CAN BE NO AWARD OF COMPENSATION TO AN INFORMER. MANY SEIZURES AND FORFEITURES OF RUM RUNNERS RESULT FROM INFORMATION RECEIVED BY CUSTOM OFFICERS FROM INFORMERS. IT IS THEREFORE DESIRABLE THAT INFORMERS' AWARD PROVISIONS SHOULD BE AS LIBERAL AS

POSSIBLE. THE PRESENT AMENDMENT IS DESIGNED TO PERMIT AWARDS WHERE THE FORFEITURE IS MADE UNDER THE NAVIGATION LAWS.

"SECTION 305 (B) FURTHER AMENDS SECTION 619 OF THE TARIFF ACT OF 1930 TO PERMIT PAYMENT OF AWARDS OF 25 PERCENT OF THE APPRAISED VALUE TO INFORMERS IN CASES WHERE FORFEITED VESSELS, VEHICLES, OR MERCHANDISE ARE NOT SOLD AT CONDEMNATION SALES BUT ARE TAKEN OVER FOR GOVERNMENT USE OR ARE DESTROYED UNDER THE PROVISIONS OF SECTION 5 OF THIS BILL, AS A CONTINUING MENACE TO THE REVENUES OF THE UNITED STATES, OR UNDER THE PROVISIONS OF ANY OTHER REVENUE LAW. THIS IS IN LINE WITH THE COMMENT MADE RELATIVE TO SECTION 305 (A) THAT THE PROVISION PERMITTING COMPENSATION OF INFORMERS SHOULD BE LIBERAL AND THUS ENCOURAGE THE CONTINUATION OF THESE VALUABLE SOURCES OF INFORMATION CONCERNING SMUGGLING ACTIVITIES.'

WHILE THIS LEGISLATIVE HISTORY DOES NOT SHOW CONCLUSIVELY THAT GOVERNMENTAL AGENCY WAS MEANT TO INCLUDE THE AGENCIES OF FEDERAL, STATE AND LOCAL GOVERNMENTS, IT CANNOT BE DENIED THAT THE INTENT OF THE LANGUAGE OF SECTIONS 305 (A) AND (B) OF H.R. 7980 WAS TO MAKE THE PROVISIONS MORE LIBERAL. ALSO, IF THE CONGRESS HAD INTENDED TO PERMIT PAYMENT OF AWARDS ONLY WHEN THE MERCHANDISE WAS DELIVERED TO A FEDERAL GOVERNMENTAL AGENCY, IT EASILY COULD HAVE USED LANGUAGE SO PROVIDING. SINCE THE NORMAL MEANING OF THE TERM "ANY GOVERNMENTAL AGENCY" WOULD INCLUDE BOTH FEDERAL AND STATE GOVERNMENTAL AGENCIES AND THE PURPOSE OF PAYING THE AWARDS--- ENCOURAGE THE CONTINUATION OF VALUABLE SOURCES OF INFORMATION--- WOULD BE EQUALLY SERVED IN EITHER CASE, IT IS OUR VIEW THAT THE AWARDS MAY BE PAID WHEN THE MERCHANDISE IS DELIVERED TO EITHER A FEDERAL OR STATE GOVERNMENTAL AGENCY FOR OFFICIAL USE.