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B-162005, Apr. 8, 1968

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TO MR. PATTERSON:

YOUR LETTER OF JANUARY 17, 1967, TO THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, HAS BEEN TRANSMITTED HERE FOR REPLY. WITH THAT LETTER YOU RETURNED A CHECK DRAWN ON THE TREASURER OF THE UNITED STATES IN THE AMOUNT OF $11,612.68, PAYABLE TO THE TREASURER OF THE STATE OF MISSISSIPPI.

THE CHECK WAS RETURNED BECAUSE THE AMOUNT OF $8,694.30 HAD BEEN DEDUCTED FROM AMOUNTS OTHERWISE DUE THE STATE TO COVER THE CLAIM OF THE FEDERAL AVIATION AGENCY (NOW THE FEDERAL AVIATION ADMINISTRATION) FOR REFUND OF MISSISSIPPI GASOLINE TAX ON PURCHASES OF AVIATION FUEL BY THAT AGENCY DURING THE PERIOD OCTOBER 24, 1962, THROUGH JULY 27, 1964. YOU FEEL THAT THIS IS AN UNWARRANTED AND ARBITRARY DETERMINATION WHICH SHOULD NOT BE DEDUCTED FROM AN ESTABLISHED OBLIGATION.

UNDER THE CIRCUMSTANCES HERE INVOLVED WE FEEL THAT THERE MAY BE SOME MISUNDERSTANDING ON YOUR PART AS TO THE RECORD ON WHICH THE WITHHOLDING WAS BASED, PARTICULARLY IN VIEW OF YOUR EARLIER LETTER TO US OF JULY 19, 1965, PERTAINING TO THE SAME SUBJECT MATTER. IN THAT LETTER YOU APPEAR TO BE OF THE VIEW THAT EXEMPTION WAS REQUESTED ON THE BASIS OF SECTION 10013- 39 OF THE MISSISSIPPI CODE OF 1942 WHICH EXEMPTS FROM THE MISSISSIPPI GASOLINE TAX, GASOLINE SOLD TO THE FEDERAL GOVERNMENT FOR USE OF ITS ARMED FORCES, AND THAT THE FEDERAL AVIATION AGENCY WAS NOT ENTITLED TO THE EXEMPTION SINCE IT WAS NOT UNDER THE JURISDICTION OF THE DEFENSE DEPARTMENT. THIS WAS NOT THE CASE. A REFUND OF SIX CENTS OF THE SEVEN- CENT GASOLINE TAX WAS REQUESTED PURSUANT TO SECTION 10013-12 OF THE MISSISSIPPI CODE OF 1942 WHICH PROVIDED FOR SUCH REFUND WHERE THE GASOLINE WAS USED FOR INDUSTRIAL PURPOSES.

THE RECORD SHOWS THAT BY LETTERS DATED DECEMBER 3 AND 15, 1962, PRIOR TO THE PURCHASE OF THIS AVIATION GASOLINE UPON WHICH THE TAX WAS IMPOSED, THE AGENCY IN AN ATTEMPT TO COMPLY WITH SECTION 10013-13 OF YOUR STATUTE REQUESTED FROM YOUR MOTOR VEHICLE COMPTROLLER YOUR BOOK ENTITLED ,CERTIFICATE FOR PURCHASE OF AVIATION GASOLINE" (FORMM-V-CA-3) AND THAT BY LETTERS DATED DECEMBER 5 AND 15, 1962, MR. E. T. CALHOUN WHO WAS THEN THE REFUND AUDITOR, PETROLEUM TAX DIVISION, REFUSED TO ISSUE THE REQUESTED CERTIFICATE BOOK ON THE GROUND THAT IT WAS NOT NECESSARY. THE RECORD FURTHER SHOWS THAT IN A MEETING HELD ON OCTOBER 22, 1964, BETWEEN THE STATE AND AGENCY OFFICIALS, MR. WALTER HESTER, COMPTROLLER, MOTOR VEHICLE TAX DIVISION, STATED THAT THE LETTERS WRITTEN BY MR. CALHOUN DATED DECEMBER 5 AND 15, 1962, ADVISING THE AGENCY THAT IT WAS UNNECESSARY TO QUALIFY FOR THE USERS REFUND BOOK WERE IN ERROR AND CONTRARY TO THE MISSISSIPPI CODE COVERING REFUND OF SUCH TAX; THAT MR. CALHOUN WAS NO LONGER EMPLOYED BY THE

STATE; BUT THAT REGARDLESS OF THIS FACT NEITHER HE NOR ANY OTHER OFFICIAL OF THE STATE WOULD BE AUTHORIZED TO MAKE RETROACTIVE REFUND OF TAXES. A COPY OF THE FAA MEMORANDUM OF THIS MEETING IS ENCLOSED.

SINCE THE INTENT OF THE MISSISSIPPI STATUTE, AS STATED IN SECTION 10013- 45 OF THE CODE, WAS TO PROVIDE FOR THE REFUNDING TO THE CONSUMER OF TAXES PAID IN EXCESS OF ONE CENT PER GALLON ON GASOLINE NOT USED ON THE PUBLIC HIGHWAYS, AND SINCE THE UNITED STATES ATTEMPTED TO COMPLY WITH THE PROCEDURAL REQUIREMENTS OF THE STATUTE BUT WAS THWARTED BY THE ERRONEOUS ACTION OF THE STATE OFFICIAL ENTRUSTED WITH THE ADMINISTRATION OF THE LAW, WE ARE OF THE OPINION THAT THE STATE OF MISSISSIPPI IS INDEBTED TO THE UNITED STATES FOR THE AMOUNT OF THE REFUND WHICH THE GOVERNMENT WOULD OTHERWISE HAVE RECEIVED. AS WE UNDERSTAND THE POSITION OF THE STATE OFFICIALS, IT IS THE LACK OF REMEDY RATHER THAN A LACK OF MERIT WHICH PRECLUDED THEM FROM ALLOWING A REFUND.

OUR ACTION IN DIRECTING THE DEPARTMENT OF THE INTERIOR TO WITHHOLD THIS INDEBTEDNESS FROM AMOUNTS OTHERWISE DUE THE STATE OF MISSISSIPPI WAS IN STRICT ACCORDANCE WITH THE STATUTORY DUTY OF THE GENERAL ACCOUNTING OFFICE UNDER THE PROVISIONS OF SECTION 236, REVISED STATUTES, AS AMENDED BY SECTION 305 OF THE BUDGET AND ACCOUNTING ACT, 1921, APPROVED JUNE 10, 1921, 42 STAT. 24, 31 U.S.C. 71, WHICH PROVIDES THAT:

"ALL CLAIMS AND DEMANDS WHATEVER BY THE GOVERNMENT OF THE UNITED STATES OR AGAINST IT, AND ALL ACCOUNTS WHATEVER IN WHICH THE GOVERNMENT OF THE UNITED STATES IS CONCERNED, EITHER AS DEBTOR OR CREDITOR, SHALL BE SETTLED AND ADJUSTED IN THE GENERAL ACCOUNTING OFFICE.'

BY NECESSARY IMPLICATION, WHENEVER THERE IS INVOLVED ANY CLAIM OR DEMAND WHATEVER BY THE UNITED STATES AGAINST ANY PERSON WHO HAS A CLAIM OR DEMAND AGAINST THE GOVERNMENT, THE GENERAL ACCOUNTING OFFICE NOT ONLY HAS THE AUTHORITY, BUT IS REQUIRED, IN THE PROPER DISCHARGE OF ITS DUTY TO SETTLE AND ADJUST SUCH OPPOSING CLAIMS OR DEMANDS, TO SET OFF ONE INDEBTEDNESS AGAINST THE OTHER AND TO CERTIFY FOR PAYMENT OR COLLECTION, AS THE CASE MAY BE, ONLY THE NET BALANCE. AS WAS STATED BY THE SUPREME COURT OF THE UNITED STATES IN THE CASE OF UNITED STATES V MUNSEY TRUST CO., 332 U.S. 234 (1947), AT PAGES 239-240:

"* * * THE GOVERNMENT HAS THE SAME RIGHT -WHICH BELONGS TO EVERY CREDITOR, TO APPLY THE UNAPPROPRIATED MONEYS OF HIS DEBTOR, IN HIS HANDS, IN EXTINGUISHMENT OF THE DEBTS DUE TO HIM.- GRATIOT V UNITED STATES, 15 PET. 336, 370; MCKNIGHT V UNITED STATES, 98 U.S. 179, 186. MORE THAN THAT, FEDERAL STATUTE GIVES JURISDICTION TO THE COURT OF CLAIMS TO HEAR AND DETERMINE -ALL SET-OFFS, COUNTERCLAIMS, CLAIMS FOR DAMAGES, WHETHER LIQUIDATED OR UNLIQUIDATED, OR OTHER DEMANDS WHATSOEVER ON THE PART OF THE GOVERNMENT OF THE UNITED STATES AGAINST ANY CLAIMANT AGAINST THE GOVERNMENT IN SAID COURT * * *.-

"/2) THIS POWER GIVEN TO THE COURT OF CLAIMS TO STRIKE A BALANCE BETWEEN THE DEBTS AND CREDITS OF THE GOVERNMENT, BY LOGICAL IMPLICATION GIVES POWER TO THE COMPTROLLER GENERAL TO DO THE SAME, SUBJECT TO REVIEW BY THAT COURT. * * *"

WE TRUST THAT THE FOREGOING EXPLAINS THE REASONS FOR THE ACTION TAKEN, AND THE AUTHORITIES RELIED UPON. IN THIS CONNECTION WE ARE TODAY DIRECTING THE DEPARTMENT OF THE INTERIOR TO ISSUE A REPLACEMENT CHECK IN THE AMOUNT OF $11,612.68 PAYABLE TO THE TREASURER OF THE STATE OF MISSISSIPPI ON ACCOUNT OF THE CHECK WHICH YOU RETURNED. IN THE EVENT YOU ARE UNABLE TO AGREE THAT OUR SET-OFF ACTION IS PROPER, NEGOTIATION OF THE CHECK WILL NOT BE CONSIDERED AS

PREJUDICIAL TO THE RIGHT OF THE STATE TO PURSUE SUCH LEGAL ACTION AS MAY BE AVAILABLE TO RECOVER THE AMOUNT SET OFF.