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B-166059, Jul. 10, 1969

Number: B-166059

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TO MR. HAMPTON:

YOUR LETTER OF JANUARY 28, 1969, REQUESTS OUR DECISION ON WHETHER THE PROCEEDS OF INSURANCE, RECOVERED AS A RESULT OF THE DESTRUCTION OF GOVERNMENT PROPERTY, MAY LEGALLY BE CREDITED TO THE TRUST FUND WHICH ORIGINALLY PAID FOR THE PROPERTY OR MUST BE DEPOSITED INTO THE TREASURY AS MISCELLANEOUS RECEIPTS. THE INSURANCE PROCEEDS, IN THE AMOUNT OF $26,684.70, ARE BEING HELD IN SUSPENSE ACCOUNT 24F3875 AND THE TRUST FUND REFERRED TO, 24X8440, UNITED STATES CIVIL SERVICE COMMISSION, IS THE EMPLOYEES HEALTH BENEFITS FUND ESTABLISHED BY PUBLIC LAW 86-382 (5 U.S.C. 8909).

SECTION 484 OF TITLE 31, U.S.C. (SECTION 3617, R.S.), IN PERTINENT PART READS AS FOLLOWS:

"THE GROSS AMOUNT OF ALL MONEYS RECEIVED FROM WHATEVER SOURCE FOR THE USE OF THE UNITED STATES, EXCEPT AS OTHERWISE PROVIDED IN SECTION 487 OF THIS TITLE, SHALL BE PAID BY THE OFFICER OR AGENT RECEIVING THE SAME INTO THE TREASURY, AT AS EARLY A DAY AS PRACTICABLE, WITHOUT ANY ABATEMENT OR DEDUCTION ON ACCOUNT OF SALARY, FEES, COSTS, CHARGES, EXPENSES, OR CLAIM OF ANY DESCRIPTION WHATEVER. * * *"

ACCOUNTING OFFICERS OF THE GOVERNMENT HAVE CONSISTENTLY INTERPRETED SECTION 484 TO REQUIRE THAT MONEYS COLLECTED FOR THE USE OF THE UNITED STATES BE COVERED INTO THE TREASURY AS MISCELLANEOUS RECEIPTS. THE PRIMARY QUESTION IN THIS CASE IS WHETHER THESE INSURANCE PROCEEDS ARE MONEYS RECEIVED "FOR THE USE OF THE UNITED STATES," AS THAT PHRASE IS USED IN SECTION 484.

ALTHOUGH, AS MENTIONED IN YOUR LETTER, NUMEROUS DECISIONS HAVE HELD THAT MONEYS RECOVERED FOR DAMAGED PROPERTY MUST, IN COMPLIANCE WITH SECTION 484, BE DEPOSITED INTO THE GENERAL FUND OF THE TREASURY AS MISCELLANEOUS RECEIPTS (SEE 3 COMP. GEN. 808, 5 ID. 928; 15 ID. 683; 28 ID. 666; 35 ID. 393; 46 ID. 31), WE ARE OF THE OPINION THAT THAT REQUIREMENT IS NOT FOR APPLICATION HEREIN.

THE PURPOSE OF THE HEALTH BENEFITS PROGRAM IS TO OBTAIN INSURANCE PROTECTION FOR GOVERNMENT EMPLOYEES AND ANNUITANTS, AND BY 5 U.S.C. 8907 THE CIVIL SERVICE COMMISSION HAS A DUTY TO PROVIDE A FLOW OF INFORMATION TO THEM CONCERNING THE PROGRAM. IN PURSUANCE OF THIS DUTY THE COMMISSION PURCHASES AND DISTRIBUTES HEALTH BENEFITS BROCHURES WHICH ARE PURCHASED OUT OF THE EMPLOYEES HEALTH BENEFITS FUND. THE PROPERTY DESTROYED IN THIS CASE CONSISTED OF BROCHURES.

THE FUND CONSISTS OF CONTRIBUTIONS FROM EMPLOYEES, ANNUITANTS AND THE

GOVERNMENT, WITH CONTRIBUTIONS FROM NONGOVERNMENTAL SOURCES EXCEEDING THOSE OF THE GOVERNMENT. THE FUND IS AVAILABLE (1) WITHOUT FISCAL YEAR LIMITATION FOR ALL PAYMENTS TO APPROVED HEALTH BENEFITS PLANS; AND (2) TO PAY EXPENSES FOR ADMINISTERING THE PROGRAM. ONE PERCENT OF THE FUND IS SET ASIDE FOR ADMINISTRATIVE EXPENSES AND THREE PERCENT FOR CONTINGENCY RESERVES.

SECTION 8909 OF THE FEDERAL EMPLOYEES HEALTH BENEFITS ACT, IN PROVIDING FOR THE EMPLOYEES HEALTH BENEFITS FUND, MAKES IT CLEAR THAT THE FUND IS EARMARKED FOR THE EXCLUSIVE USE OF THE HEALTH BENEFITS PROGRAM. SUBSECTION (B) OF THAT SECTION GRANTS AUTHORITY TO THE COMMISSION TO TRANSFER UNUSED FUNDS FOR ADMINISTRATIVE EXPENSES TO CONTINGENCY RESERVES, AND THE SAME DISPOSITION IS DIRECTED FOR ALL INCOME DERIVED FROM DIVIDENDS, RATE ADJUSTMENTS, OR OTHER REFUNDS. THE CONTINGENCY RESERVES MAY BE USED BY THE COMMISSION TO REDUCE CONTRIBUTIONS, DEFRAY FUTURE INCREASES OR INCREASE BENEFITS. MOREOVER, SUBSECTION (C) OF SECTION 8909, IN GRANTING AUTHORITY TO THE SECRETARY OF THE TREASURY TO INVEST MONEY OF THE FUND IN UNITED STATES OBLIGATIONS AND TO SELL SUCH OBLIGATIONS, SPECIFICALLY DIRECTS THAT "THE INTEREST ON AND THE PROCEEDS FROM THE SALE OF THESE OBLIGATIONS BECOME A PART OF THE FUND.'

FROM THE FOREGOING THERE APPEARS A STATUTORY DESIGN TO PRESERVE THE FUND INTACT FOR THE ADVANCEMENT OF THE HEALTH BENEFITS PROGRAM AND SINCE THE BROCHURES WERE ORIGINALLY PURCHASED AND REPLACED WITH MONEYS OF THE FUND, IT WOULD APPEAR CONSISTENT WITH THE LEGISLATIVE PURPOSE TO CREDIT THE INSURANCE PROCEEDS TO THE FUND. SEE 39 COMP. GEN. 647; B 93322, APRIL 19, 1950. THEREFORE, IT IS OUR VIEW THAT THE INSURANCE PROCEEDS ARE NOT MONEYS FOR THE USE OF THE UNITED STATES WITHIN THE MEANING OF SECTION 484, AND YOU MAY CREDIT THEIR AMOUNT TO THE FUND'S ACCOUNT IN THE TREASURY.