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B-19882 October 28, 1941

Number: B-19882

Date: 1941-10-28

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The Honorable, The Secretary of War.

My Dear Mr. Secretary:

By second indorsement of August 15, 1941, FAe 132/296099 Maxwell, A.J., X FAR 132/260510 (Forbes, M.H.), the Chief of Finance requests to be advised as to the extent of the applicability of the decision of September 15, 1938, A-96279, in which it was held, in substance, that claims for refund of collections which theretofore had been covered into the Treasury as miscellaneous receipts should not be paid by Finance Officers with funds in their hands representing similar collections, but should be transmitted to this office for consideration under the appropriation account "Refund of Moneys Erroneously Received and Covered."

The matter giving rise to the present request appears to be an audit objection raised by this office with respect to an adjustment of $5.67 in the account of Lieutenant Colonel A.J. Maxwell, F.D., for September, 1940, symbol No. 229-645. The facts with respect to the transaction are set forth in first indorsement, dated July 29, 1941, from the Finance Officer to the Chief of Finance, as follows:

"On the payroll of CCC Company 2224-V for October 1939, voucher 1202 November, 1939, CCC enrollee Thomas J. Dwyer, CC2-189010, was credited with pay for the months of September and October and there appeared after his name the remark 'Due U.S. Govt. as per Report of Survey, 5th Ind. Par. 2 dated 8-13-39 $67.85'. On that payroll there was collected $9.34 to apply against the Report of Survey leaving an unsatisfied balance of $58.51. During the period from November 1, 1939 to August 31, 1940, ten months, collections were made at the rate of $4.67 per month reducing the unsatisfied balance to $11.81, which amount was collected on the final payroll dated September 30, 1940 voucher 1431 October 1940.

"In accordance with paragraph 95 c, 3. D. CCC Regulations, as amended by Changes 39, Oct. 11, 1939, all collections except the one of $4.67 made on the June 1940 payroll were properly credited to the Special Deposit Account. On the June 1940 payroll, voucher 909 July, 1940, the collection was erroneously placed to the credit of Miscellaneous Receipts, but the error was discovered in September, 1940 and an adjustment was made by reducing deposits to the credit of Miscellaneous Receipts under code number 754330 and increasing the Special Deposit Account accordingly. This is one of the transactions to which the General Accounting Office has taken exception.

"In January 1941 the entire amount of $67.85 was transferred from Special

Deposit Account to the credit of Miscellaneous Receipts 754330 thus nullifying the two erroneous transactions.

"On the final pay voucher of CCC enrollee Leonard F. Ayotte, CC2-313068 CCC Company 1260, voucher 3491 October 1939 there appeared a steppage of $6.22 due U.S. The enrollee having but $3.00 due on the final statement, only $3.00 was collected. Subsequently it was administratively determined that enrollee Ayotte should be held pecuniarily responsible for $2.00 only and that the additional $1.00 should be withdrawn from Miscellaneous Receipts and credited to the appropriation and procurement authority from which final payment was made. Overlooking the provisions of paragraph 18 F. C. B.-1, which directs that where an amount has been erroneously credited and deposited in the Treasury as Miscellaneous Receipts, claim for refundment will be forwarded to the General Accounting Office, this office in September, 1940, also endeavored to effect the adjustment as recommended by the Board of Officers and this adjustment is the other of those referred to in the letter from the General Accounting Office."

After referring to the decision of September 15, 1938, the second indorsement of August 15, 1941, states, in part, as follows:

"2. Not long after the above decision was made by the Comptroller General, this office received form Major Charles S. Denny, F.D., Finance Officer, Fort Jay, New York, a communication dated December 6, 1938, citing erroneous payments and collections on vouchers in the accounts of Major M.H. Forbes, F.D., and Major Charles S. Denny, F.D. Said communications was transmitted to your office by 1st Indorsement of December 20, 1938, requesting necessary adjustment by your office in view of the said decision. These papers were returned to this office by letter signed by R.N. Elliot, Acting Comptroller General of the United States,

dated January 30, 1939, file B-192, inviting attention to a later decision

of the Comptroller General dated January 25, 1939 (A-99077) in which it

was stated in part that the prior decision of September 15, covered a

situation where the refund of collections erroneously received and covered

were not properly chargeable to any other appropriations.

"3. While the adjustment referred to in the preceding correspondence is

not exactly identical to the one referred to in the letter of the Acting

Comptroller General of the United States of January 30, 1939, there is a

similarity in the two cases. Further, there is a large number of similar

adjustments necessitated from time to time and of which this office is in

doubt as to whether the same should be adjusted by the Finance Officer, by

this office by means of the correction book, or be transmitted to your

office for settlement."

Paragraph 18, Finance Circular No. B-1, as amended, July 19,1940, referred to, is as follows:

"Claims for refund--miscellaneous receipts.--Where an amount has been erroneously collected and deposited in the Treasury as 'Miscellaneous Receipts,' claims for refundment will be forwarded to the General Accounting Office, Claims Division, through the Chief of Finance. Such claims will contain a citation to the voucher or account pertaining to the erroneous collection. See U.S. Comp. Gen. A-96279, September 15, 1938 and A.R. 35-820."

The requirements of said decision of September 15, 1938 A-96279, appear to be clearly and concisely stated in that circular and it is not apparent why compliance therewith should occasion any confusion. The two decisions referred to, dated January 25, 1939, A-99077, and January 30, 1939, B-192, involved adjustments of accounts without actual disbursements of Public funds, as distinguished from cases in which the adjustment is for the purpose of refunding the amount involved, and it was for that reason the adjustments were authorized in those two cases without compliance with the requirements of the prior decision.

With respect to the adjustment of $5.67 involved in the present matter, in view of all the facts and circumstances appearing said adjustment will not be further questioned by this office. It may be proper, however, to point out the difference between the two items involved in such adjustment insofar as concerns the application of the decision of September 15, 1938. In the case of Thomas J. Dwyer, CC2-189010, since the adjustment was not for the purpose of refunding the amount of $4.67 the decision is not for application and the adjustment of that item as made appears to have been proper. In the case of Leonard F. Ayotte, CC2-313068, however, since the restoration of the $1item to the appropriation involved apparently was for

the express purpose of refunding that amount, the said decision was for application and its requirement should have been complied with. Attention is invited to decision 17 Comp. Gen. 859, for the general rule governing refunds of erroneous collections, and to clause 7, section 9, Article 1, of the Constitution of the United States providing that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by law." In cases where it becomes necessary to draw and pay out money form the Treasury, that is to say, in cases, where refunds are required of moneys which have been covered in the Treasury as miscellaneous receipts, the only appropriation available for such refunds is that made by section 18 of the Permanent Appropriation Repeal Act, June 26, 1934, 48 Stat. 1231, and it is with respect to such cases that the requirements of the decision of September 15, 1938 are for application.

Respectfully,

Lindsey C. Warren

Comptroller General

of the United States