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B-208705, Sep 14, 1982

Number: B-208705

Date: 1982-09-14

B-208705, SEP 14, 1982

DIGEST: PROVISION IN FISCAL YEAR 1982 APPROPRIATIONS ACT FOR DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES REQUIRED NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) TO CONTINUE A SPECIFIC RAIL LINE. IN THE ABSENCE OF WORDS OF FUTURITY, AND BECAUSE THE PROVISION WAS RELATED TO THE SUBJECT MATTER OF THE APPROPRIATION, GAO CONSIDERS THE EFFECT OF THE PROVISION TO BE LIMITED TO THE LIFE OF THE APPROPRIATION.

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK): PERMANENCY OF LANGUAGE IN APPROPRIATIONS ACT:

THE CHAIRMAN OF THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION HAS REQUESTED OUR OPINION REGARDING THE PERMANENCY OF CERTAIN LANGUAGE IN THE DEPARTMENT OF TRANSPORTATION'S FISCAL YEAR 1982 APPROPRIATION ACT. THE LANGUAGE IN QUESTION, LISTED UNDER "GRANTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION," REQUIRES THE CONTINUATION OF AMTRAK'S "CARDINAL" LINE:

"*** PROVIDED FURTHER, THAT NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE CORPORATION SHALL PROVIDE THROUGH RAIL PASSENGER SERVICE BETWEEN WASHINGTON, D. C. AND CHICAGO, VIA CINCINNATI ***."

ACT OF DECEMBER 23, 1981, PUB.L. NO. 97-102, TIT. I, 95 STAT. 1442, 1451.

WE HAVE BEEN ASKED WHETHER THIS PROVISION CREATED A PERMANENT ENACTMENT, OR WHETHER THE EFFECT OF THE LANGUAGE IS LIMITED TO THE LIFE OF THE APPROPRIATION.

AS IS OUR USUAL PRACTICE, WE REQUESTED THE VIEWS OF THE ORGANIZATION INVOLVED, IN THIS CASE AMTRAK. IN RESPONSE WE WERE FORWARDED A COPY OF A LEGAL MEMORANDUM FROM AMTRAK'S GENERAL COUNSEL, DATED AUGUST 17, 1982, IN WHICH HE TAKES THE POSITION THAT THE PROVISION IN QUESTION IS A PERMANENT ENACTMENT. THIS POSITION IS BASED UPON THE FACT THAT (1) THERE IS NOTHING IN THE LANGUAGE OF THE PROVISO THAT LIMITS ITS EFFECT TO THE LIFE OF THE APPROPRIATION; AND (2) THERE IS NO LANGUAGE IN THE STATUTE WHICH LINKS THE PROVISO TO THE 1982 APPROPRIATION. IN ADDITION, THE GENERAL COUNSEL ASSERTS THAT THE LEGISLATIVE HISTORY OF THE PROVISO SUPPORTS A CONCLUSION THAT THE CONGRESS INTENDED THE ENACTMENT TO HAVE A PERMANENT EFFECT.

FOR THE REASONS DISCUSSED BELOW IT IS OUR OPINION THAT THE PROVISION DID NOT CREATE A PERMANENT ENACTMENT.

THE PROVISION IN QUESTION WAS INCLUDED IN AN AMENDMENT OF THE SENATE COMMITTEE ON APPROPRIATIONS TO H.R. 4209, THE BILL LATER ENACTED AS PUBLIC LAW 97-102. IT

WAS ADDED BASED UPON "THE COMMITTEE'S BELIEF THAT AN AGGRESSIVE EFFORT ON THE PART OF AMTRAK WOULD RESULT IN THIS TRAIN CONTINUING TO MEET THE CONGRESSIONAL CRITERIA" FOR CONTINUATION OF SERVICE. S.REP. NO. 97-253, 97TH CONG., 1ST SESS. 104 (1981). THE COMMITTEE ALSO DIRECTED AMTRAK TO REPORT PERIODICALLY TO THE CONGRESS ON ITS EFFORTS TO OPERATE THE LINE. ID.

DURING SENATE FLOOR DEBATE ON H.R. 4209, THE COMMITTEE AMENDMENT WAS VOTED TO BE GERMANE TO THE SUBJECT MATTER CONTAINED IN THE APPROPRIATION BILL, THEREBY PRECLUDING A POINT OF ORDER AGAINST THE AMENDMENT THAT IT WAS GENERAL LEGISLATION ON AN APPROPRIATIONS BILL, UNDER RULE XVI OF THE STANDING RULES OF THE SENATE. SEE 127 CONG.REC. S12,779 (DAILY ED., NOV. 3, 1981). THIS WAS FOLLOWED BY AN UNSUCCESSFUL ATTEMPT TO AMEND H.R. 4209 TO DELETE THE PROVISION. ID. AT S12,782.

THIS OFFICE HAS LONG HELD THAT A PROVISION CONTAINED IN AN ANNUAL APPROPRIATIONS ACT IS NOT TO BE CONSTRUED AS PERMANENT LEGISLATION UNLESS THE LANGUAGE USED THEREIN OR THE NATURE OF THE PROVISION RENDERS IT CLEAR THAT SUCH WAS THE INTENTION OF THE CONGRESS. SEE, E.G., 36 COMP.GEN. 434 (1956); 10 COMP.GEN. 120 (1930). FN1 WHEN THE LANGUAGE OF THE PROVISION CONTAINS WORDS OF FUTURITY, MOST COMMONLY THE TERM "HEREAFTER," THE PROVISION WILL USUALLY BE CONSTRUED AS PERMANENT. SEE, E.G., 26 COMP.GEN. 354 (1946). ALTERNATIVELY, WHERE THE PROVISION IS OF A GENERAL NATURE, BEARING NO RELATION TO THE OBJECT OF THE APPROPRIATION, IT WILL OFTEN BE CONSIDERED PERMANENT. ID.

IN THE PRESENT CASE, THE LANGUAGE OF THE PROVISION IN QUESTION DOES NOT APPEAR TO CONTAIN SUFFICIENT WORDS OF FUTURITY TO JUSTIFY ITS CONSTRUCTION AS PERMANENT. WE DO NOT CONSIDER THE LANGUAGE "NOTWITHSTANDING ANY OTHER PROVISION OF LAW" TO BE WORDS OF FUTURITY, BUT RATHER TO BE LANGUAGE OF PRESENT EXCLUSIVITY; IT IS NOT UNLIKE THE INCLUSION OF A REFERENCE TO "THIS OR ANY OTHER ACT," WHICH WE HAVE HELD NOT TO INDICATE FUTURITY. B-145492, SEPTEMBER 21, 1976.

ADDITIONALLY, IT CANNOT BE SAID THAT THE PROVISO IS OF A GENERAL NATURE, BEARING NO RELATION TO THE OBJECT OF THE APPROPRIATION ACT OF WHICH IT IS A PART. ON THE CONTRARY, IT REQUIRES AMTRAK TO TAKE CERTAIN ACTIONS (CONTINUING THE OPERATION OF THE CARDINAL LINE) IN A STATUTE THAT OTHERWISE PROVIDES FUNDING FOR THE ACTIVITIES OF THAT ORGANIZATION. ALSO, ALTHOUGH NOT CONCLUSIVE, THE ACTION OF THE SENATE IN VOTING THAT THE PROVISO WAS GERMANE TO THE SUBJECT MATTER OF THE APPROPRIATION BILL DEMONSTRATES A CONNECTION BETWEEN THE PROVISO AND THE APPROPRIATION THAT SUPPORTS THE CONCLUSION THAT THE PROVISO WAS NOT INTENDED TO BE PERMANENT. SEE 127 CONG.REC. S12,779 (DAILY ED., NOV. 3, 1981).

FURTHER, WE HAVE EXAMINED THE LEGISLATIVE HISTORY OF THE ENACTMENT AND CANNOT AGREE WITH AMTRAK'S GENERAL COUNSEL THAT IT INDICATES THAT THE CONGRESS CONSIDERED THAT THE PROVISO WOULD HAVE A PERMANENT EFFECT. ALL OF THE LANGUAGE CITED BY THE GENERAL COUNSEL, PARTICULARLY THAT WHICH REFERS TO THE CONTINUING REVIEW OF THE CONGRESS, IS EQUALLY CONSISTENT WITH THE VIEW THAT THOSE INVOLVED IN THE LEGISLATION ANTICIPATED HAVING TO ACT ON THE MATTER AGAIN WHEN THE APPLICABLE FUNDING LAPSED. FN2

HAVING DETERMINED THAT THE PROVISO WAS NOT INTENDED TO BE A PERMANENT ENACTMENT, WE MUST STILL CONSIDER WHETHER IT SHOULD BE CONSIDERED TO BE EFFECTIVE ONLY TO THE END OF THE FISCAL YEAR 1982, OR UNTIL THE EXHAUSTION OF AMTRAK APPROPRIATIONS, WHICH ARE AVAILABLE UNTIL EXPENDED. IF THE PROVISO HAD PROVIDED FURTHER FUNDING FOR AMTRAK, SECTION 309 OF THE APPROPRIATIONS ACT WOULD SPECIFICALLY HAVE LIMITED THE AVAILABILITY OF SUCH FUNDS TO FISCAL YEAR 1982,

UNLESS EXPRESSLY PROVIDED OTHERWISE. SEE B-207792, AUGUST 24, 1982. NONETHELESS, SINCE SECTION 309 DOES NOT APPLY, AND BECAUSE THE PROVISO APPEARS IN CONNECTION WITH A NO-YEAR APPROPRIATION, WE ARE OF THE OPINION THAT ITS EFFECT MAY CONTINUE BEYOND THE END OF THE FISCAL YEAR, BUT ONLY SO LONG AS THE FUNDS PROVIDED REMAIN AVAILABLE. ONCE THOSE FUNDS HAVE BEEN OBLIGATED, CONTINUATION OF THE CARDINAL LINE WOULD NO LONGER BE MANDATED, UNLESS THE CONGRESS TAKES SIMILAR ACTION WITH REGARD TO FUTURE AMTRAK FUNDING OR CREATES A SEPARATE PERMANENT ENACTMENT.

BASED UPON THE FACTORS DISCUSSED ABOVE, WE CONCLUDE THAT THE PROVISION IN PUBLIC LAW 97-102 REQUIRING THE CONTINUATION OF PASSENGER RAIL SERVICE BETWEEN WASHINGTON, D. C. AND CHICAGO, VIA CINCINNATI, IS EFFECTIVE ONLY FOR THE LIFE OF THE APPROPRIATIONS PROVIDED TO AMTRAK BY THAT ACT.

FN1 CONTRARY TO THE POSITION OF AMTRAK'S GENERAL COUNSEL, THERE IS NO NEED FOR A PROVISO IN AN APPROPRIATIONS ACT TO BE SPECIFICALLY LIMITED IN ORDER TO APPLY ONLY TO THE SINGLE YEAR FOR WHICH IT WAS ENACTED.

FN2 AS TO ONE OTHER EXAMPLE GIVEN BY THE GENERAL COUNSEL, WE BELIEVE THAT REMARKS BY SENATOR PACKWOOD THAT ENACTMENT OF THE PROVISO WOULD MAKE THE CARDINAL A "PREMIER TRAIN," REFER NOT TO THE PERMANENCY OF THE ENACTMENT, BUT INSTEAD TO THE FACT THAT THE PROVISION WOULD OVERRIDE PREVIOUSLY- ENACTED CRITERIA THAT WOULD REMAIN APPLICABLE TO ALL OTHER AMTRAK ROUTES.