Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Securities and Exchange Commission—Retention of Rebate Resulting from Participation in Energy Savings Program

File: B-265734

Date: February 13, 1996

DIGEST

Unless otherwise authorized, an agency must deposit into the General Fund of the Treasury any funds it receives from sources outside the agency. 31 U.S.C. § 3302 (1994). Section 625 of the Treasury, Postal Service, and General Government Appropriations Act, 1996, Pub. L. No. 104-52, provides the statutory authority for the Securities and Exchange Commission (SEC) to credit 50 percent of an energy efficiency rebate received from a local utility company in fiscal year 1996 to the accounts that fund its energy and water conservation activities. The credited amounts remain available until expended for statutorily prescribed purposes. The SEC should deposit the remaining 50 percent of the rebate into the Treasury at the end of fiscal year 1996.

DECISION

This responds to a request from the Acting Comptroller of the United States Securities and Exchange Commission (SEC) for an advance decision concerning the proper treatment of a rebate the SEC received from a local utility company. The SEC received the rebate under the company's Custom Rebate Program by installing energy efficient equipment. For the reasons discussed below, we conclude that the SEC may credit 50 percent of the rebate to the accounts that fund the energy and water conservation activities at SEC's facilities. The credited amount shall remain available until expended for additional specific energy efficiency or water conservation projects. The SEC should deposit the remaining 50 percent of the rebate to the General Fund of the Treasury at the end of fiscal year 1996.

Background

The SEC participated in the Potomac Electric Power Company's (PEPCO) Custom Rebate Program pursuant to its authority to enter utility incentive programs under section 152(f)(3), (4) of the Energy Policy Act of 1992, codified at 42 U.S.C. § 8256(c). The PEPCO Custom Rebate Program offers its customers "rebates"

based upon installation of qualified energy savings equipment.[1] According to PEPCO's program brochure, upon application to this program, PEPCO will visit the customer's site and determine if their equipment qualifies for more energy efficient equipment. If it does, PEPCO will estimate the amount of rebate that the customer would receive based on a fixed dollar amount per item installed. The customer then has 1 year to install the new equipment and submit a request for payment of the rebate. Once PEPCO verifies the actual installation, it will make a one-time lump sum payment to the customer in one of three ways: check, third party payment, or credit to a monthly utility bill.

In fiscal year 1995, the SEC contracted with a private third party to retrofit about 4,950 existing lamps and fixtures with more energy efficient ones at an approximate cost of $247,000. The SEC submitted to PEPCO its request for payment and chose to received its rebate in the form of a credit on its monthly utility bill which it received in fiscal year 1996 in the amount of $118,000.

Analysis

We agree with the SEC that it is authorized to accept the financial incentive provided by the PEPCO Custom Rebate Program. The question becomes how to account for the "rebate" once received. As a general proposition, an agency must deposit into the General Fund of the Treasury any funds it receives from sources outside of the agency unless the receipt constitutes an authorized repayment or unless the agency has statutory authority to retain the funds for credit to its own appropriations. 31 U.S.C. § 3302. Violation of this miscellaneous receipts statute constitutes an illegal "augmentation" of the agency's appropriation and funds must be returned to the Treasury so they can be appropriated as the Congress sees fit. 65 Comp. Gen. 600, 602 (1986); 62 Comp. Gen. 678, 679 (1983); 39 Comp. Gen. 647, 649 (1960).

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[1]The rebates addressed in 65 Comp. Gen. 600 (1986) and 72 Comp. Gen. 109 (1993) constituted a recovery by the government of a portion of the commissions travel agents received from commercial establishments when the agents booked reservations for federal agencies. In substance, the rebates represented a portion of the travel expense paid to the commercial establishments and returned to the government through the travel agent. Accordingly, we treated the rebate as a refund for purposes of appropriation law. See, GAO, Policy and Procedures Manual for Guidance of Federal Agencies, title 7, § 5.4 (TS 7-42, May 1993). We agree with the SEC that while using the same terminology the PEPCO rebates are not like the travel rebates and are not governed by the cases cited.

Section 152(f)(3), (4) of the Energy Policy Act of 1992, codified at 42 U.S.C. § 8256(c), authorizes and encourages agencies to participate in programs to increase energy efficiency and to accept any financial incentive, goods, or services from the utility companies for such increase in energy efficiency or management of energy demand. The act further provides that if an agency satisfies the criteria which generally apply to other customers of a utility incentive program, such agency may not be denied collection of rebates or other incentives. Finally, the act addresses an agency's treatment of a utility efficiency rebate by providing that 50 percent of the rebate "shall, subject to appropriation, remain available for expenditure by such agency for additional energy efficiency resources . . . ." 42 U.S.C. § 8256(c)(5)(A) (emphasis added).

Subsequent to your submission, Congress passed and the President signed the Treasury, Postal Service, and General Government Appropriations Act for 1996. Pub. L. No. 104-52, 109 Stat. 468, 502 (1995). This law, under the Governmentwide General Provisions, provides the necessary statutory authority for federal agencies, beginning in fiscal year 1996 and thereafter, to retain certain energy savings for the credit to its own appropriations.[2] Section 625 provides in pertinent part that

> "[b]eginning in fiscal year 1996 and thereafter, for each Federal agency, . . . an amount equal to 50 percent of (1) the amount of each utility rebate received by the agency for energy efficiency and water conservation measures, which the agency has implemented . . . may be retained and credited to the accounts that fund energy and water conservation activities at the agency's facilities, and shall remain available until expended for additional specific energy efficiency or water conservation projects or activities, . . . as authorized by section 152(f) of the Energy Policy Act (Public Law 102-486). (b) The remaining 50 percent of each rebate, . . . shall be transferred to the General Fund of the Treasury at the end of the fiscal year in which received."

Therefore, beginning in 1996, an agency would retain 50 percent of the rebate without any fiscal year limitations, and the remaining 50 percent would be deposited into the Treasury.

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[2]Section 625 explicitly excludes the Department of Defense (which has separate authority), and situations provided in 40 U.S.C. § 490g with respect to the Fund established pursuant to 40 U.S.C. § 490(f) and administered by the General Services Administration, both inapplicable to the instant situation.

Conclusion

Section 625 of the Treasury, Postal Service, and General Government Appropriations Act, 1996, provides the authority necessary for the SEC to retain and credit 50 percent of the utility rebate it receives in fiscal year 1996 to the accounts that fund energy and water conservation activities, without any fiscal year limitations. As provided in section 625, SEC should transfer the remaining 50 percent of the rebate to the General Fund of the Treasury at the end of the fiscal year.

/s/Robert Murphy
for Comptroller General
of the United States