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B-39771 September 26, 1950

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The Honorable The Secretary of the Treasury

My dear Mr. Secretary:

Reference is made to letter dated June 16,1950, from the Fiscal Assistant Secretary of the Treasury, proposing the establishment on the books of the Chief Disbursing Officer of an account entitled "Gains and Deficiencies, Act of December 23, 1944 (by Fiscal Year)" to serve as a central revolving account for all disbursing officers covered by section 2 of treasury Department Circular 830.

It is stated in the said letter that the account would be charged with amounts representing deficiencies and be reedited with amounts representing gains arising from transactions under the act of December 23, 1944, 58 Stat. 921, which authorizes disbursing officers-subject to regulations to be promulgated under the act-to conduct certain types of exchange transactions during World War II and for six months after the termination thereof, or until such earlier time as the Congress by concurrent resolution or the President may designate. The procedure is said to be predicated on the premise that gains resulting from operations under the act will be applied against deficiencies and that only the met gain or deficiency would be considered in connection with the application of section 2 of the act which provides as follows: "Any Gains in the accounts of disbursing officers of the United States resulting from operations permitted by this Act shall be paid into the Treasury as miscellaneous receipts. There are hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to adjust any deficiencies in the accounts of disbursing officers of the United States which may result from such operations."

The letter further sets forth that that an account under the title shown would be maintained by each disbursing officer included under section 2 of Treasury Department Circular 830 to which he would enter currently the amount of gains and losses resulting from operations under the act. In the case of Foreign Service disbursing officers of the Department of State, an adjustment would be made at the close of each month transferring to the account of the Chief Disbursing Officer the met gain or deficiency for the month. As to other disbursing officers the transfer of the net gain or deficiency would be made periodically as required by the Chief Disbursing Officer depending on the volume of transactions but less frequently than annually as of the close of the fiscal year. After adjustments for the fiscal year are completed and all net gains and deficiencies transferred to the account of the Chief Disbursing Officer, a

determination would be made as to whether the balance represents an overall net gain, in which event the amount would be transferred to miscellaneous receipts, or an overall deficiency, in which event the Chief Disbursing Officer would seek as appropriation to cover such deficiency as authorized by section 2 of the act of December 23, 1944.

The language of section 2 of the act appears explicit that "any gains" are to be covered into miscellaneous receipts and that "any deficiencies" are to be covered by appropriations later to be made. If gains are to be applied against deficiencies, as proposed, it seems evident that the gains can mot be covered into miscellaneous receipts as required by the act.

Furthermore the legislative history of the act of December 23, 1944, shows that, shortly after the attack on Pearl Harbor, the Department of the Army as a matter of military necessity authorized its disbursing officers to engage in exchange transactions of the type authorized by that act. The House Committee on Expenditures in Report No. 1945, 78th Congress, 2d Section, on the bill which because the said law reported, in part, as follows:

"**** Whenever operations carried on under the measure result in profits in the official accounts of the disbursing officers, these gains are paid into the Treasury as miscellaneous receipts; and, conversely, any deficiencies which may be incurred are to be met from funds which are authorized to be appropriated. Your committee has been informed that to date these operations have resulted in a net profit."

It appears clear therefrom that the Congress understood that gains were then being paid into miscellaneous receipts and that any losses would be borne from appropriations which were therein authorized but not made. Also, it appears that it fully understood the difference between "any losses" and "any gains" and "net profit." Accordingly, it must be presumed that, if the Congress intended that gains over any fiscal year, or for any other period, would be available as a revolving fund to defray losses under the act, provision would have been made therefor in the act.

There, I am constrained to the view that section 2 of the act of December 23, 1944, may not properly be construed as applicable only to net gains or deficiencies and that "any" (all) gains are required to be covered into miscellaneous receipts and are mot available to defray deficiencies which may be cleared only upon appropriations being made as authorized in the said act. Hence, you are advised that, in the absence of clarifying amendments to the statue in that regard, there appears no proper basis for establishment of a revolving account, as proposed.

Sincerely yours,

Comptroller General of the United States