

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-184479

DATE: JAN 2 1976

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MATTER OF: Use of Account 20X1807, "Refund of Moneys Erroneously Received and Covered"

DIGEST: Refund by Internal Revenue Service (IRS) of fine paid pursuant to conviction for violation of wagering tax statutes, which refund was ordered in connection with subsequent vacation of judgment, should be charged against account 20X0903 (Refunding Internal Revenue Collections) rather than account 20X1807 (Refund of Moneys Erroneously Received and Covered), since initial receipt of fine by IRS was apparently treated as internal revenue collection, and account 20X1807 is available only when refund is not properly chargeable to any other appropriation.

This decision is in response to a request from an Authorized Certifying Officer, Fiscal Management Division, Internal Revenue Service (IRS), Department of the Treasury. The question presented is whether the account 20X1807, "Refund of Moneys Erroneously Received and Covered," may properly be used to make payment in the situation described below.

On December 17, 1964, Mr. Peter Grafner paid a fine of \$2,000 to the Clerk, United States District Court, Northern District of Illinois, pursuant to a conviction under 26 U.S.C. § 7203 (1970) for violation of wagering tax provisions of the Internal Revenue Code. The funds were transmitted by the Clerk to the Director of the IRS Chicago District in January, 1965. In 1968, the Supreme Court held that similar wagering tax statutes "may not be employed to punish criminally those persons who have defended a failure to comply with their requirements with a proper assertion of the privilege against self-incrimination." Marchetti v. United States, 390 U.S. 39, 42 (1968); Grosso v. United States, 390 U.S. 62 (1968). These decisions have been applied retroactively. Pasha v. United States, 484 F.2d 630 (7th Cir. 1973). Upon Grafner's motion based on Pasha v. United States, *supra*, the District Court, on January 27, 1975, ordered the prior judgment of conviction vacated and directed the return of the \$2,000 paid as a fine. The Clerk of Court has requested payment from IRS. There is thus no doubt as to the propriety of payment, the sole question being the appropriation to be charged.

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The disposition of Mr. Grafner's original fine is summarized in a June 9, 1975, memorandum from the Director, IRS General Legal Services Division, to the Chief, Accounting Branch, Fiscal Management Division (IRS):

"The clerk transmitted this fine to the District Director on January 11, 1965 for deposit in the appropriate account. This is established by a certified copy of the transmittal voucher which was attached to the clerk's letter. Presumably, the Internal Revenue Service deposited the money in accordance with applicable procedures. In this regard, we understand that procedures called for such funds to be deposited as miscellaneous collections. Also, it would appear that 26 U.S.C. 7809 treats such funds as internal revenue collections. There is no indication the money was placed in an escrow account or in another separate account designated by statute. Indeed, we know of no reason why in this instance any account would have been used other than above described."

Further in this connection, we have been informally advised by IRS officials that, since the fine was originally paid over 10 years ago, records of its initial disposition have been destroyed.

The provision of law cited in the IRS memorandum, 26 U.S.C. § 7809(a), provides in pertinent part that, with exceptions not relevant here --

"* * * [T]he gross amount of all taxes and revenues received under the provisions of this title, and collections of whatever nature received or collected by authority of any internal revenue law, shall be paid daily into the Treasury of the United States under instructions of the Secretary or his delegate as internal revenue collections, by the officer or employee receiving or collecting the same, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description. A certificate of such payment, stating the name of the depositor and the specific account on which the deposit was made, signed by the Treasurer of the United States, designated depository, or proper officer of a deposit bank, shall be transmitted to the Secretary or his delegate."

This appears to be the appropriate provision for the disposition of the original fine. See also 26 C.F.R. § 301.7406-1 (1974).

The account for "Refund of Moneys Erroneously Received and Covered" was established by section 18 of the Permanent Appropriation Repeal Act, 1934, 48 Stat. 1224, 1231, 31 U.S.C. § 725q (1970), which provides in pertinent part:

"* * * On July 1, 1935, there shall be established on the books of the Government an account to be designated 'Refund of Moneys Erroneously Received and Covered', and there is authorized to be appropriated such sums as may be necessary to meet any expenditures of the character now chargeable to the appropriation accounts herein abolished and other collections erroneously received and covered which are not properly chargeable to any other appropriation. * * *"

Appropriations necessary to meet expenditures under this account are provided on a permanent indefinite basis in 31 U.S.C. § 725q-1 (1970).

The general rule for the use of the account for "Refund of Moneys Erroneously Received and Covered" was stated in 17 Comp. Gen. 859, 860 (1938) as follows:

"When the amount subject to refund can be traced as having been erroneously credited to an appropriation account the refund claim is chargeable to said appropriation whether it be lapsed or current, or reimbursable or nonreimbursable. * * * It is only when collections erroneously covered into the Treasury as miscellaneous receipts are involved and the refund is not properly chargeable to any other appropriation that there is for consideration charging the appropriation 'Refund of moneys erroneously received and covered.'"

See also 19 Comp. Gen. 788 (1940); 29 Comp. Gen. 78 (1949). Before the account 20X1807 may be used, these criteria must be met.

Based on the information supplied by IRS, it appears that the amount subject to refund cannot be traced to a specific appropriation account. Also, while the term "miscellaneous receipts" generally refers to moneys covered into the Treasury under 31 U.S.C. § 484 (1970), section 7809 of title 26, supra, appears to serve a somewhat similar purpose with reference to amounts received under the internal revenue laws. In fact, some of the language used in the two sections is virtually identical.

One of the criteria set forth in 17 Comp. Gen. 859, supra, is that "the refund is not properly chargeable to any other appropriation." This is fortified by the specific language of the permanent appropriation in 31 U.S.C. § 725q-1. In the United States Treasury Department's "Federal Account Symbols and Titles," on page 135, there is listed the account 20X0903, "Refunding Internal Revenue Collections." This account appears to generally contemplate refunds of amounts initially collected as taxes. Nevertheless, since the amount of the fine in question was apparently treated as an internal revenue collection when it was received (26 U.S.C. § 7309, supra), it seems entirely proper to us to treat it similarly for purposes of the refund. Accordingly, it is our view that the subject refund should be charged to account 20X0903, "Refunding Internal Revenue Collections," rather than account 20X1807, "Refund of Moneys Erroneously Received and Covered."

Paul G. Dembling
Acting Comptroller General
of the United States