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DECISION



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

Flannery
G.G.H.

FILE:

DATE:

MAY 9 1978

MATTER OF: B-161457

**Federal Agency Payment of Penalties and Interest
on Federal Employment Taxes**

DIGEST:

Payment of interest and penalties for late filing or underpayment of employment taxes to Internal Revenue Service by other Federal government agencies is not authorized. In the absence of a statutory provision requiring payment, the appropriations of those agencies are not available for payment of interest and penalties.

The Department of Navy, through its Accounting and Finance Center, has requested an advance decision on whether the Internal Revenue Service (IRS) can assess penalties and/or interest against the Navy for the late filing of Federal Insurance Contributions Act (FICA) taxes, Federal income taxes withheld from the salaries of its civilian and military employees, and underpayments of deposits for various Federal excise taxes. Navy has reserved payment on vouchers representing these charges pending the outcome of this decision.

As an employer, the Government of the United States, its agencies and instrumentalities, are subject to the following Federal tax provisions of the Internal Revenue Code of 1954 as amended (IRC).

1. IRC sections 3402(a) and 3404, require each Federal agency or instrumentality to deduct and withhold Federal income taxes from wages and salaries paid to its officers and employees.
2. IRC sections 3102 and 3122 require each Federal agency or instrumentality to deduct and withhold Federal Insurance Contributions Act taxes from wages paid to those employees covered under that Act.
3. IRC sections 3111, 3112, and 3122 require every Federal agency and instrumentality to pay an excise tax with respect to the salaries and wages paid to employees covered by FICA.

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4. IRC sections 3301, 3305(b), and 3308 require certain agencies and instrumentalities of the United States to pay an excise tax on the wages and salaries paid to its employees as contributions to an Unemployment Fund under the Federal Unemployment Tax Act.

For the purposes of this decision the above taxes will collectively be referred to as "employment taxes."

As a preliminary matter, we note that under section 6406 of the IRC, this Office has no authority to review individual tax assessments for the purpose of substituting our judgment for that of the IRS. See, S.L.L., 38 Comp. Gen., 12, 14 (1958). However, this decision does not concern the settlement of tax liability, but addresses the question of whether agency appropriations are available for payment of penalties and interest under the IRC for failure to pay an acknowledged tax liability on time. See, 31 U.S.C. §§ 53(a) and 74 (1970).

The United States as an employer is liable for the payment of salaries and employment taxes in the same manner as the private sector employer. However, these payments come from the appropriated funds of the particular Federal agency or instrumentality employer, which are available only for the purposes for which they are appropriated. As such, these funds would not be available for the payment of interest and penalties pursuant to the above stated rule. The fact that a particular Federal agency or instrumentality fails to make the paper transfer of funds to another agency by a certain date would not, in our opinion, be a basis for making the appropriations of the first agency available to pay penalties or interest to the second agency, absent a statute specifically so providing.

The IRC provisions requiring the payment of interest and penalties, IRC sections 6601, 6656, 6659, 6671, are general provisions applicable to all taxes under the IRC. The rationale for applying these provisions against the private sector employer is not present when the employer is the United States since the funds are already in the hands of the United States. We therefore conclude that Federal agencies may not use their appropriations for payment of such interest and penalties. Accordingly, the voucher which is returned herewith, may not be certified for payment.

We would point out, however, that even though Federal agencies may not use their appropriations for payment of interest and penalties, it is our view that such agencies are required to meet the statutory filing deadline and should take all necessary steps to insure compliance

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with such deadlines. In this connection we have been informally advised by Treasury officials that agencies' failure to make prompt payment results in increased borrowing costs to the Treasury.

R. F. KELLER

**(Deputy) Comptroller General
of the United States**