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DECISION



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

FILE: B-161457

DATE: December 5, 1983

MATTER OF: Applicability of Internal Revenue Code section 6611 to overpayments of employer taxes by Federal agencies

DIGEST:

Section 6611 of the Internal Revenue Code does not require the payment of interest on overpayments of employer taxes by Federal Government agencies, since the funds are already in the hands of the Government.

The Assistant Secretary (Administration) of the Department of the Treasury has requested our opinion on the applicability of Internal Revenue Code section 6611 interest payment provisions to overpayments of employment taxes by Federal Government agencies. Although the Federal employment taxes, which are set forth in Subtitle C of the Internal Revenue Code, include both employer and employee taxes, we understand Treasury's question to concern only the former. These include the Federal Insurance Contributions Act (FICA) tax on employers (26 U.S.C. §§ 3111-3112), the Railroad Retirement tax on employers (26 U.S.C. § 3221), and the Federal Unemployment tax (26 U.S.C. § 3301). We conclude that, with respect to these employer taxes, section 6611 does not require the payment of interest on overpayments by Federal agencies.

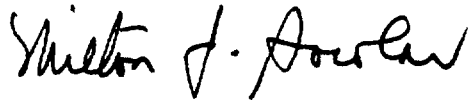
Subsection (a) of 26 U.S.C. § 6611 provides that interest shall be paid on any overpayment of internal revenue tax. On the other hand, Treasury notes that in our opinion B-161457, May 9, 1978, we held that the payment of interest and penalties for late filing or underpayment of employment taxes to the IRS by other Federal agencies was not authorized. In that decision, we explained that the rationale for applying the I.R.C. provisions which require the payment of interest and penalties 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. Treasury contends that "the I.R.C. § 6611 situation requiring IRS interest payments for federal overpayments is analogous to the federal agency underpayment interest/penalty circumstances described in B-161457 because, in both cases, all funds are already in the hands of the United States and, therefore, the rationale for applying interest/penalty provisions against the private sector is not present in either case." Treasury accordingly argues that the IRS should be prohibited from using its appropriated funds for the payment of section 6611 interest to other Federal agencies.

We agree with Treasury that our decision of May 9, 1978 should be extended to prohibit the use of appropriated funds by the IRS for the payment of interest on overpayments of employer taxes by other Federal agencies. As Treasury points out, our rationale for barring the use of agency appropriations to pay interest to the IRS—i.e.

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that the funds are already in the hands of the United States--is equally applicable in this case. We accordingly conclude that section 6611 of the Internal Revenue Code does not require the payment of interest on overpayments of employer taxes by Federal Government agencies.


for Comptroller General
of the United States