

DECISION

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

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FILE: B-212222**DATE:** August 23, 1983**MATTER OF:** Debt Collection—Administrative Offset and Interest against State and local governments.**DIGEST:**

Sections 10 and 11 of the Debt Collection Act of 1982, 31 U.S.C. §§ 3716 and 3717, authorize use of administrative offset and assessment of interest and other charges when collecting debts owed to Federal Government by "persons." Statute further defines "person" as not including agencies of State or local governments. Absent any indication of contrary legislative intent, sections 10 and 11 are not exclusive and do not prohibit use of offset or charging of interest against State or local governments when and to the extent authorized by some other statute or under the common law.

The Department of Agriculture has requested our decision concerning the meaning and effect of sections 10 and 11 of the Debt Collection Act of 1982, 96 Stat. 1749, 1754-1756. The question is whether these sections prohibit the use of administrative offset and the assessment of interest, processing and handling fees, or late payment penalty charges on debts owed to the Federal Government by State and local governments. As is explained below, we think they do not. Instead, it is our opinion that the language at issue simply exempts debts owed by State and local governments from the requirements of sections 10 and 11 of the Debt Collection Act. Such debts are still subject to administrative offset or the assessment of interest and other charges whenever authorized by other statutes or principles of common law.

The Debt Collection Act of 1982 made several amendments to the Federal Claims Collection Act of 1966 (FCCA), 31 U.S.C. § 3701 et seq. (formerly 31 U.S.C. § 951 et seq.). Section 10 of the Debt Collection Act added a new section 5 to the FCCA which authorizes agencies to collect a claim from a "person" by means of administrative offset. Section 11 amended section 3 of the FCCA to direct agencies to assess interest, processing and handling charges, and penalties on debts owed by "persons" under certain circumstances. Sections 10 and 11 have been codified as 31 U.S.C. §§ 3716 and 3717 respectively. Pub. L. No. 97-452 (January 12, 1983), 96 Stat. 2467, 2471-72.

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Sections 10 and 11 by their terms applied only to debts owed by "persons," and both sections expressly provided, in virtually identical language, that "person" does not include any agency of the United States or of "any State or local government." 96 Stat. 1755 and 1756. These definitions have been combined and codified as 31 U.S.C. § 3701(c). According to Agriculture, some State and Federal agencies have construed this definition to mean that Congress intended to completely prohibit the Federal Government from using administrative offset or assessing interest (and the other charges specified) on debts owed by agencies of State or local governments. Agriculture has taken the position, however, and we agree, that the restrictive definition contained in sections 10 and 11 does not prohibit Federal agencies from continuing to use administrative offset or assessing interest and other charges, pursuant to the common law or other statutory authority.^{1/}

We first considered the meaning of this definition in a letter to the Department of Justice, B-209669, December 17, 1982. In that letter, we noted that the legislative history of the Debt Collection Act does not disclose any explanation of the meaning or purpose of these provisions. It appears that the definition of "person" was inserted into sections 10 and 11 of the Act after the Senate and House bills were reported out of committee. The floor debates do not shed any additional light on the matter. Consequently, we have only the plain language of the Act to guide us.

In our view, this restrictive definition merely exempts those entities not included in the definition of "person" from the provisions of sections 10 and 11 of the Debt Collection Act. Those sections authorize or require certain actions to be taken with regard to debts owed by "persons;" yet State and local governments are not "persons" within the meaning of those sections. Consequently, those sections do not apply to debts owed by State and local governments. There is no evidence of congressional intent to prohibit the use of administrative offset or the assessment of interest and other charges against State and local governments when an agency of the Federal Government is acting pursuant to some other authority which may be available to it, whether founded in statute or common law.

In addition, section 10 expressly provides that it will not apply to any case in which another statute explicitly provides for or prohibits the use of administrative offset to collect claims owed to the United States. 31 U.S.C. § 3716(c)(2). Section 11 contains

^{1/} See, e.g., United States v. Munsey Trust Co., 332 U.S. 234 (1947) (common law right of setoff); Young v. Godbe, 82 U.S. (15 Wall.) 562, 565 (1873) (common law right to interest).

a similar proviso with regard to the assessment of interest and other charges authorized by that section. 31 U.S.C. § 3717(g)(1). Those two provisos clearly demonstrate that Congress did not intend, by the passage of sections 10 and 11, to repeal by implication any other pre-existing statutes which authorize or govern the use of offset or the assessment of interest and other charges. Compare Morton v. Mancari, 417 U.S. 535, 550 (1974).

Moreover, we presume that had the Congress intended to impose a comprehensive prohibition which impliedly repealed or abrogated common law principles concerning the use of administrative offset or the assessment of interest and other charges against all entities not covered by sections 10 and 11, it would have provided statutory language, or at least legislative history, to clearly express such a purpose or reasonably support such a construction. As the Supreme Court said in Isbrandtsen Co. v. Johnson, 343 U.S. 779, 783 (1952):

"Statutes which invade the common law * * * are to be read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident."

As noted above, the legislative history is silent as to the intended impact of the definition of "person." "This silence is most eloquent, for such reticence while contemplating an important and controversial change in existing law is unlikely. * * * At the very least, one would expect some hint of a purpose to work such a change, but there was none." Edmonds v. Compagnie Generale Transatlantique, 443 U.S. 256, 266-67 (1979). See also United States v. Bellard, 674 F.2d 330, 335 (5th Cir. 1982). Accordingly, we conclude that sections 10 and 11 do not abrogate the common law beyond the extent required by their terms.

For these reasons, it is our opinion that, to the extent that there is authority other than sections 10 and 11 of the Debt Collection Act of 1982 (whether founded in statute or common law), agencies of the Federal Government are authorized to use administrative offset, and to assess interest or other authorized charges against State and local governments, in order to collect debts owed to the United States. B-209669, December 17, 1982. See also 62 Comp. Gen. ____ (B-210086, July 28, 1983).

for *Harry R. Van Cleave*
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of the United States