DECISION

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

FILE: B-217913 **DATE:** May 30, 1986

MATTER OF: Rebates from Travel Management Center Contractors

DIGEST: Rebates from Travel Management Centers redistributed to paying Federal agency may be retained by agency for credit to its own appropriation and does not need to be deposited into the Treasury as miscellaneous receipts. This does not constitute an illegal augmentation of appropriations in that these rebates are adjustments of previous amounts disbursed and therefore qualify as "refunds" under regulations permitting such refunds to be retained by the agency.

This decision is in response to a request from the General Counsel of the General Services Administration (GSA) asking whether Federal agencies whose employee travel arrangements are handled by Travel Management Centers (TMC) (travel agents operating under so-called no cost contracts with GSA) might in the future retain rebate payments proposed to be received from TMCs. The agency would either deposit these payments to the credit of appropriations against which employee travel is charged or have amounts representing a portion of the commission received by TMCs from third parties whose services are used by TMCs when making employee travel arrangements credited against future billings.

As explained in further detail below, payments or credits may be credited to the appropriation against which the cost of employee travel is charged or applied against future billings for employee travel because they would constitute refunds which do not have to be deposited to the general fund of the Treasury as miscellaneous receipts.

BACKGROUND

GSA currently has nearly 100 contracts with TMCs and is considering further expansion of the program. GSA proposes to request rebates or credits from TMCs in selected future solicitations. TMCs do not charge the Government directly for the services they provide, but instead receive commissions from transportation or lodging establishments with whom they book reservations. Three methods are used to effect payment to TMCs for Federal employee travel:

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1. The TMC is paid by a contractor (Diners Club) which has issued a credit card to a Government employee pursuant to a contract with GSA;

2. The TMC is paid by a contractor (Diners Club) on behalf of GSA under GSA's Government Travel Systems accounts (GTS); or

3. The TMC is paid directly pursuant to Government Transportation Requests (GTR).

GSA proposes to recapture part of the TMC commissions in the form of a rebate collected periodically and remitted by the TMCs to GSA or to the particular agency making payment on a GTS or reimbursing the employee who travels on a charge card. When GTRs are used, a credit would be made by the TMC toward the particular agency account involved. GSA views the rebate as a discount but is concerned that where a GTS or credit card is used any rebate recovered might have to be deposited to the credit of miscellaneous receipts of the Treasury pursuant to 31 U.S.C. § 3302.

DISCUSSION

As a general proposition, absent specific statutory authority, all funds received for the use of the United States must be deposited in the general fund of the Treasury as miscellaneous receipts. 31 U.S.C. § 3302. Violation of this statute constitutes an illegal "augmentation" of the agency's appropriation and funds must be returned to the Treasury so they can be appropriated as the Congress sees fit.

One of the exceptions to the general rule is that an agency may retain receipts which qualify as "refunds to appropriations." Refunds are defined as "repayments for excess payments and are to be credited to the appropriation or fund accounts from which the excess payments were made. Refunds must be directly related to previously recorded expenditures and are reductions of such expenditures."[1/] Refunds also have been defined as representing "amounts collected from outside sources for payments made in error, overpayments, or

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1/ GAO Policy and Procedures Manual for the Guidance of Federal Agencies, Title VII, section 12.2.

adjustments for previous amounts disbursed."[2/] Since there is no statutory authority which would in this instance permit agency retention of rebates, the question is whether the rebate may be deemed a "refund" within the scope of the regulations.

In determining whether the rebate or credit can be properly characterized as a refund under these regulations we rely upon our line of cases which permit the crediting of refunds to the appropriations charged. It has been suggested that agency retention of the rebate in this case follows from two of our decisions involving contracts which contained clauses providing for some type of adjustment in the contract price. In 34 Comp. Gen. 145 (1954) we held that the refund required under a guarantee-warranty clause was properly creditable to the agency appropriation because it could be considered an adjustment in the contract price. Similarly in 33 Comp. Gen. 176 we held that a contractor's refund made under a price redetermination clause may be credited to the agency account in that the refund was the return of an admitted overpayment.

A similar conclusion is reached in the situation where a breaching contractor is required to pay the excess costs of reprocurement. In 62 Comp. Gen. 678 (1983) we determined that such funds need not be deposited into the general fund of the Treasury. In this case and in the prior cases cited the amounts received are not illegal augmentations of agency appropriations because they are adjustments in previous amounts disbursed which serve to provide the agency involved with that which it bargained for under the original contract. Similarly, amounts received from an insurer for damage to an employee's personal property where the agency has paid a claim by the employee under 31 U.S.C. § 3721 may be credited to the appropriation of the agency. See 61 Comp. Gen. 5377 (1982). We concluded that the recovery is analogous to the recovery of an overpayment or the return of an unused advance and qualifies as a refund under the regulations. See also 62 Comp. Gen. 70 (1982).

In each of the three situations described by GSA in its submission, the proposed payment or credit can similarly be characterized as a refund within the scope of the decisions authorizing deposit to the credit of the appropriation against which the employee travel was initially charged. It is most

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[2/] Treasury Department-GAO Joint Regulation No. 1, reprinted as Appendix B to Title VII of the Policy and Procedures Manual.

clear in the third example since there the billing is made by, and paid to, the TMC. However, the nature of the payment or credit does not change simply because in the first example the Government pays the employee for his authorized expenses and in the second example it pays the Diners Club. This is because in both of these situations the commission charged by the TMC is ultimately paid by the Government.

Consequently, if the TMC agrees to discount its services to the Government, we see no reason why the agency should not be authorized to deposit this saving to the credit of the appropriation against which the initial cost of the exmployee travel is charged. The fact that the party making the payment or credit may not be the same one the Government paid does not alter this conclusion. Thus, such payments or credits representing a discount on commissions otherwise collected by TMCs in connection with handling travel arrangements for Government employees on official business, the cost of which is ultimately paid for by the Government, may be refunded to the credit of the appropriation initially charged the cost of employee travel.[3]/

for Milton J. Socolar
Comptroller General
of the United States

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[3]/ See 31 U.S.C. § 1552(b).