Martin Kolsky

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Termination of Claims Against Federal Civilian and Military Personnel Based on Costs of Collection

File: B-217181

Date: September 29, 1986

DIGESTS

1. Agencies may, on a case-by-case basis, take the anticipated costs of required administrative hearings into consideration when determining whether to compromise or terminate collection of debts owed to the United States pursuant to the Federal Claims Collection Standards, 4 C.F.R. ch. II. However, those costs (like other kinds of administrative costs) should be included only when there is a substantial likelihood that that they will actually be incurred in the particular case.

2. Agencies should not consider the anticipated costs of administrative hearings or reviews when establishing minimum debt amounts and points of diminishing returns for their debt collection programs.

3. Agencies may, without conducting cost studies, provide that debts of $1 or less that are owed to the United States by Federal civilian and military personnel need not be collected. Similarly, refunds of $1 or less that are owed to such personnel need not be paid, unless a specific claim for the refund is made.

DECISION

Questions have arisen concerning the authority of Government agencies, under the Federal Claims Collection Act of 1966 (as amended and codified in 31 U.S.C. ch. 37 (1982)), to terminate the collection of debts owed the United States. Two agencies have asked that we clarify the extent to which that authority applies to debts owed by Government employees.1/

1/ For purposes of this decision, the terms "Government employees" and "Federal employees" should be read as including military personnel.

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For the reasons set forth below, we conclude that:

> --When determining whether to compromise or terminate the collection of debts owed by Federal employees, agencies may, on a case-by-case basis, consider the costs of providing administrative due process-styled procedures that are required by law, including oral or paper hearings and other procedures required by provisions of the Debt Collection Act of 1982.
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> --Agency debt collection policies may include realistic points of diminishing returns and minimum debt amounts (beyond which collection need not be undertaken) for debts owed the United States by Federal employees. However, agencies may not consider the anticipated costs of administrative due process-styled procedures when establishing those policies.

BACKGROUND

The DOT Proposal. The Director of Financial Management of the Department of Transportation (DOT) seeks our views regarding a draft change to DOT collection procedures. According to its submission, DOT presently "pursues all collection and refund actions regardless of the amounts involved." DOT observes that, when the amounts involved are "nominal," DOT's policy "results in resource investments which cannot be justified." For this reason, DOT is considering modifying its policies to state that:

> "(1) Operating administrations shall not initiate collection action of $1 or less on the assumption, without cost studies, that collection costs will always exceed the amount recoverable. They may, however, on their own initiative, establish higher minimums provided that the dollar figure is reasonable and supported by cost studies.
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> "(2) The dollar figures and criteria provided for collections are also relevant in the case of refunds with one exception. Refunds shall be processed, regardless of the amount involved, when a specific claim is made."

DOT notes that GAO has previously endorsed similar proposals regarding debts owed by persons other than current Government employees. E.g., 58 Comp. Gen. 372 (1979). The question is whether the same policy may be legally applied to debts and refunds involving current Federal employees.

The DOE Inquiry. The Department of Energy (DOE) asks whether, in view of the procedural requirements imposed on

the process of salary offset by the Debt Collection Act of 1982 (DCA) (Pub. L. No. 97-365, § 5, 96 Stat. 1749, 1751-52), agencies may terminate the collection of debts owed by employees when the amounts to be recovered would be exceeded by the costs of conducting administrative hearings required by law. The DOE submission notes that the Debt Collection Act of 1982 requires agencies to accord employees with certain due process-styled procedures prior to taking salary offsets under 5 U.S.C. § 5514. DOE makes the following argument:

> "Many of the hearings that are planned in [DOE] will result in costs in excess of the debt. In the past, the Comptroller General has held that termination is not authorized in overpayment cases where payroll withholding under 5 U.S.C. 5514 is available for remedy. However, with the current revision to 5 U.S.C. 5514 and the additional costs of conducting hearings, reconsideration of this position is necessary.
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> "[DOE believes] that in the interest of economy, hearings of this type should have a 'diminishing returns' standard applied to ensure efficient use of resources in carrying out the debt collection program. By this we do not mean that an employee's right to a hearing hinges on the amount of the indebtedness; rather, the Federal Government should have the right to terminate collection activity when it is cost effective to do so. * * *"

FEDERAL CLAIMS COLLECTION

In 1966, Congress passed the Federal Claims Collection Act (FCCA) to require Government agencies to administratively attempt to collect all debts owed the United States. The FCCA also gave agencies limited authority to suspend, compromise, and terminate collection action on certain types of claims that do not exceed $20,000. Among the criteria specified in the FCCA for the exercise of this authority is a statement that agencies should consider whether "the cost of collecting the claim is likely to exceed the amount of recovery."2/ The FCCA is implemented in joint regulations--the Federal Claims Collection Standards (FCCS), 4 C.F.R. ch. II (1985)--issued by GAO and the Department of Justice. Unless

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2/ Pub. L. No. 89-508, § 3, 80 Stat. 308, codified in 31 U.S.C. ch. 37 (1982). See also FCCS, 4 C.F.R. §§ 102.14, 103.4, 104.3(c).

another statute either specifies different procedures to be followed in collecting debts under it, or authorizes an agency to set different procedures in its regulations (and the agency does so), each agency's collection activities are required to be consistent with the FCCS.3/

At the time of the FCCA's enactment, agencies were already authorized by a number of statutes to take salary offsets, that is, to make involuntary deductions from an employee's pay in order to collect debts owed to the United States.4/ Few of those statutes specified what (if any) procedures were to be followed by the Government when it took salary offset under them. However, in 1982, Congress passed the DCA to "put some teeth into Federal [debt] collection efforts" by giving the Government more of "the tools it needs to collect those debts, while safeguarding the legitimate rights of privacy and due process of debtors."5/ Section 5 of the DCA amended 5 U.S.C. § 5514 to expand the number and type of debts that can be collected by salary offset.6/ Section 10 of the DCA amended the FCCA to include a provision concerning administrative offset against debtors who are not subject to more specific statutory offset authority.7/ In both cases, however, the DCA in keeping with its stated purposes also imposed specific due process-styled procedures to be followed, prior to taking offset under those provisions. The procedures dictated by those sections, though somewhat different in their details, require the Government to notify

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3/ FCCS, 4 C.F.R. § 101.4. Cf., e.g., 64 Comp. Gen. 142, 148 (1984).

4/ E.g., 5 U.S.C. §§ 5511(b) (debts owed by employees removed for cause), 5512(a) (accountable officer debts), 5513 (disallowed payments), 5514 (erroneous payments of pay), 5522(a)(1) (advance payments for evacuations), 5705 (travel advances), 5724(f) (advances for travel and transportation); 37 U.S.C. § 1007 (debts owed by Army and Air Force members). (Note: some of these statutes were amended subsequent to enactment of the FCCA.)

5/ 128 Cong. Rec. S12328 (daily ed. Sept. 27, 1982) (remarks of Sen. Percy). Cf., e.g., 64 Comp. Gen. 142, 143 (1984); 64 Comp. Gen. 816, 817 (1985).

6/ DCA, § 5, 96 Stat. 1751-52, codified in 5 U.S.C. § 5514, as implemented in 5 C.F.R. pt. 550, subpt. K (hereafter cited as "Subpart K").

7/ DCA, § 10, 96 Stat. 1754-55, codified in 31 U.S.C. § 3716; as implemented in FCCS, 4 C.F.R. §§ 102.3, 102.4 (1985).

debtors of the amount and existence of their debts, and to afford them opportunities for oral or paper hearings, as appropriate.[8]/

In addition, GAO has consistently expressed the view that agencies should establish "minimum debt amounts" and realistic "points of diminishing returns" in their debt collection activities.[9]/ Both concepts derive from the notion of cost effectiveness--that is, agencies should not spend more money to attempt to collect a debt than is likely to be recovered on it.

The term "minimum debt amounts" refers to the designation of categorical thresholds beneath which collection action need not be initiated because the amounts of the debts in that class are so small (in relation to the costs of attempting any collection efforts) that it would not be cost effective to make any effort to collect those debts. Except for nominal amounts, minimum debt amounts should be supported by cost studies.[10]/ "Diminishing returns" refers to an agency's designation of thresholds at which the agency will discontinue collection efforts (already initiated) when it appears that for that class of debts, the costs of additional collection actions would exceed the amounts likely to be recovered. For example, initial demand letters may be relatively inexpensive to prepare and send, even when compared to the value of very small debts. However, if the debtors refuse to pay in response to the intitial letters, the small size of those debts may not justify further collection actions.

It will be seen from this brief summary that in addressing the requests in this case, we are dealing with two conceptually related but nevertheless different things: (1) the authority to compromise a claim or terminate collection action on a case-by-case basis, and (2) the authority to establish "minimum debt amounts" and "points of diminishing returns" to be applied categorically.

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[8]/ 5 U.S.C. § 5514(a)(2), as implemented in Subpart K, § 550.1102(b), 49 Fed. Reg. at 27472; 31 U.S.C. § 3716(a), as implemented in FCCS, 4 C.F.R. § 102.3.

[9]/ E.g., 18 Comp. Gen. 838 (1939); 55 Comp. Gen. 1438 (1976). As is indicated below, this policy is reflected in the FCCS, 4 C.F.R. § 102.14 (1985).

[10]/ E.g., 58 Comp. Gen. 372 (1979).

DISCUSSION

1. Compromise/Termination

The FCCS recognize the concept of cost-effectiveness with respect to both compromise and termination. Thus, an agency may compromise a claim "if the cost of collecting the claim does not justify the enforced collection of the full amount." 4 C.F.R. § 103.4. Similarly, an agency may terminate collection action "when it is likely that the cost of further collection action will exceed the amount recoverable thereby." 4 C.F.R. § 104.3(c). The question has arisen frequently in our previous decisions whether this authority applies to debtors who are currently employees or military members of the Federal Government.

Viewed in the aggregate, the thrust of our prior decisions in this area is that, while the statutory authority to compromise or terminate applies to all debtors, some of the specific criteria in the FCCS (e.g., diminishing returns, 4 C.F.R. § 104.3(c)) would rarely if ever apply in the case of current Federal employees.11/ As noted above, the DCA and its implementing regulations (FCCS and Subpart K) now require Federal agencies to afford debtors with certain procedural rights, including notice and an opportunity to be heard (through either an oral or a paper hearing) prior to taking offset. Some of these procedural requirements necessarily entail significant administrative costs. Thus, as DOE suggests, these new developments in the law warrant reconsideration of whether agencies may, if the costs of administrative procedures required by law would exceed the amounts likely to be recovered, compromise or terminate collection, with regard to debts owed by Federal employees who are subject to salary offset.

We think it is legitimate for agencies to take the cost of required administrative procedures into account when evaluating debt collection options. We also think it is fundamental that agencies should generally terminate collection when the costs of collection would exceed the amount to be recovered. We say "generally," because there may be cases in which sound countervailing Government policies dictate that collection be

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11/ The cases are collected and discussed in GAO's Principles of Federal Appropriations Law, pp. 11-186 through 11-189 (1982).

attempted, despite the costs. For example, it may be desirable for the agency to disregard the costs of collection when it wishes to "set an example," and thereby discourage or deter other persons from incurring similar debts or resisting payment of them.12/

Consequently, we think that agencies may (but are not required to) take the costs of administrative procedures required by law into account when deciding whether to terminate the collection of debts. This holds true for all kinds of debtors, including Federal employees. We stress, however, that these costs constitute only one of the factors to be considered in the agency's exercise of sound discretion under the FCCS.

These conclusions are consistent with advice that GAO and the Justice Department have already issued regarding the authority to compromise debts under section 103.4 of the FCCS. When the FCCS were promulgated, the following guidance was included in the Supplemental Information Statement that accompanied the final regulations:

> "[A] Federal agency queried whether the cost of collecting a claim for purposes of § 103.4 includes the cost of various administrative hearings and appeals, such as a pre-offset oral hearing where required or an appeal from an audit disallowance. In brief, the answer is yes, and we think the existing language is sufficient to cover the desired ground. However, we caution agencies to be realistic in their estimation of costs. Inclusion of an item should be triggered by a substantial likelihood that the cost will actually be incurred in the particular case, not merely because it is vaguely possible. With rare exceptions, the cost of a pre-offset oral hearing will normally not be relevant for purposes of [§ 102.13(d)]." 49 Fed. Reg. 8889, 8895 (1985).13/

12/ Cf., e.g., FCCS, 4 C.F.R. § 103.5 (Debts may be compromised "if the agency's enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of the sum to be agreed upon. Mere accidental or technical violations may be dealt with less severely than willful and substantial violations.").

13/ When the FCCS were published, a typographical error was included in this passage. The last sentence referred to "§ 103.4." The reference should have been § 102.13(d).

The same caveats applicable to compromise apply also to termination. For example, there must be a substantial likelihood that the particular type of cost will be incurred in the particular case before that cost may serve as a basis for termination. Moreover, although agencies must accord debtors with their full procedural rights, agencies should take all necessary and appropriate steps to assure that this is done in the most efficient and cost-effective manner, so that when such costs are taken into consideration, they are as accurate, realistic, and as minimal as possible. Otherwise, the viability of the Government's debt collection programs could be jeopardized.

3. Minimum Debt Amounts/Diminishing Returns

What we have said thus far applies to case-by-case determinations. In our opinion, these same considerations do not apply to the establishment of categorical minimum debt amounts and points of diminishing returns, and agencies normally should not include the costs of administrative hearings in their calculations when establishing these categorical levels.

First, the procedures prescribed by the DCA are still evolving and their costs are uncertain. Agencies are still learning the parameters of the statutory requirements, and it is not yet clear just how costly they will ultimately prove.

Second, factoring in the cost of administrative proceedings when setting categorical levels necessarily requires agencies to assume that a significant number of "small" debt cases would, in fact, result in requests for administrative review. We doubt that the agencies are presently in a position to accurately estimate whether a significant number of such requests will in fact be filed. Many small claim debtors may be willing to pay their debts once notified of them. Under these approaches, however, on the assumption that debtors would resist collection efforts and request costly hearings, those debtors would never be advised of the existence of their debt or afforded the opportunity to voluntarily pay.

Third, inclusion of these costs in the determination of points of diminishing returns could tend to encourage frivolous requests for administrative procedures. Under the FCCS termination authority, agencies must evaluate the costs of administrative procedures on case-by-case basis. Under diminishing returns, by contrast, termination would be automatic. Many debtors who learn of the establishment of this point of diminishing returns would automatically request

hearings in order to manipulate the debt into a posture that would necessarily preclude its collection.[14]/

Finally, and most importantly, these approaches require an agency to automatically forego or discontinue collection without considering whether there may be countervailing reasons (such as those mentioned earlier) which militate in favor of collection, despite the potential costs. In essence, adopting the minimum debt amount and diminishing returns approaches could result in the loss, to an extent we consider undesirable, of agency flexibility and discretion.

We think that, at least for now, it is sufficient that agencies have the ability to take into consideration, on a case-by-case basis, the anticipated costs of administrative procedures, which the debtor has actually requested, when considering whether to compromise or terminate collection on particular debts. At least until there has been sufficient experience to warrant re-evaluation, agencies should not include the costs of required due process-styled procedures in their calculations of minimum debt amounts and diminishing returns. Of course the considerations noted above do not apply when the minimum debt amount is nominal, as in the DOT proposal. Nominal amounts do not require cost studies (58 Comp. Gen. at 375). We see no reason why a proposal such as DOT's should not apply to all debtors equally.

CONCLUSIONS

(1) An agency may, on a case-by-case basis, take the cost of required administrative hearings into consideration when determining whether to compromise a debt claim or terminate collection action, if there is a substantial likelihood that the cost will actually be incurred in the particular case. This applies to Government employees as well as other debtors. (Department of Energy request.)

(2) Agencies should not use the anticipated costs of administrative hearings or reviews when establishing

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[14]/ We recognize that this same problem exists to an extent even in the context of case-by-case determinations. Once it is known that an agency will consider the cost of administrative hearings in evaluating its collection options, a debtor whose case has little merit may request a hearing solely to encourage compromise or termination by "puffing up" the agency's collection costs. We do not have a perfect solution. The views expressed in this decision reflect an attempt to balance cost-effectiveness with what we think is necessary agency flexibility. An agency can minimize the problem by not permitting termination to become automatic.

categorical minimum debt amounts or points of diminishing returns.

(3) An agency policy not to initiate collection action on debts of $1 or less may, without cost studies, be applied to debts owed by Federal employees. Similarly, refunds to such persons in amounts of $1 or less need not be made unless a specific claim is made (Department of Transportation proposal). As we have suggested in the past, a refund policy along these lines should be announced in appropriate regulations.

Milton J. Socolar

for Comptroller General
of the United States