



**Department of Energy  
Washington, D.C.**

October 18, 1991

MEMORANDUM FOR: Robert Brockman, Branch Chief (AD-151)  
Public Utilities Branch  
Office of Organization, Resources and Facilities Management

FROM: Kathy D. Izell, Attorney-Advisor (GC-34)  
Office of the Assistant General Counsel for Procurement and  
Finance

SUBJECT: Rebates

Utility companies are increasingly issuing rebates to their customers who purchase and utilize energy efficient equipment that help the utility companies to control the rate of demand growth and defer the building of costly power plants and the attendant transmission and distribution facilities. In the past DOE has accepted credits to its bills from utility companies in instances when energy rebates were being offered. However, currently utility companies wish to send a check to DOE as it does to its other customers rather than issue a credit to DOE on the DOE bill.

Your office has requested that this office provide a legal opinion concerning the ability of the Department of Energy (DOE) to accept such rebates from utilities and the proper mechanism for recording such rebates. This legal opinion does not address the instances where DOE utilizes its authority under Title VIII of the National Energy Conservation Policy Act entitled "Shared Energy Savings" to enter into arrangements.

In accordance with 31 U.S.C. 3302, all funds received for the use of the United States must be deposited into the general fund of the Treasury as miscellaneous receipts. Violation of this statute constitutes an augmentation of appropriations.

However, there are two exceptions to this general legal proposition. One of the exceptions is a revolving fund. When establishing a revolving fund, Congress authorizes an initial capital contribution to the fund, the continuous provision of a service, and the financing of future services by the income generated by the activity itself. Thus, payments to a revolving fund are recredited to the fund account and available for obligation for the same activity.

The second exception to the general legal proposition involves repayments to appropriations account that represent either reimbursements or refunds. Reimbursements are sums received by the Federal Government as a repayment for commodities sold or services furnished either to the public or to another Government account, which are authorized by law to

be credited directly to a specific appropriation and fund account. General Accounting Office, Glossary of Terms Used in the Federal Budget Process, p. 74 (March 1981).

Refunds are defined in the General Accounting Office, Glossary of Terms Used in the Federal Budget Process, page 73 (March 1981) as “returns of advances or recoveries of erroneous disbursements from appropriation or fund accounts that are directly related to, and reductions of, previously recorded payments from the account.” Refunds in Title VII, Section 12.2(2) of the General Accounting Office Policy and Procedures Manual for the Guidance of Federal Agencies 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. ...[R]efunds must be directly related to previously recorded expenditures and are reductions of such expenditures.” Further, the Treasury Department-General Accounting office Joint Regulation No. 1 set forth as Appendix B To Title VII of the General Accounting Office Policy and Procedures Manual for the Guidance of Federal Agencies explain the concept of refunds as “Refunds to appropriations ... represent amount collected from outside sources made in error, overpayments, or adjustments for previous amounts disbursed...”

DOE Order 2200.6, Change 2, adopts the same approach by utilizing the following description. “Refunds to appropriations are amounts received that represent the return to DOE of excess payments made to others. Refunds result from overpayments, payments made in error, or adjustments for previous amounts disbursed, including returns of authorized advances and rebates. Unlike reimbursements, refunds are directly related to previously recorded disbursements. Thus, the recovery of an erroneous payment or overpayment qualifies as a refund to the specific appropriation originally charged and is deposited therein, rather than to the General Fund of the Department of the Treasury.”

Given the forgoing, the issue becomes whether or not these utility rebates would constitute “refunds to appropriations”. There are a number of Comptroller General decisions relevant to this issue. The Comptroller has held that the moneys paid to the Federal Government under a guarantee-warranty clause as an adjustment in the contract price constituted a “refund” (34 Comp. Gen 145 (1954)), and the Comptroller General has held that moneys credited to the agency account under a price redetermination clause constituted a “refund” (33 Comp. Gen. 176 (1954)). Most recently in Matter of: Rebates from Travel Management Center Contractors, the Comptroller General examined numerous General Services Administration (GSA) contracts with Travel Management Centers (TMC) wherein the TMCs were to give to GSA rebates or credits in the commissions the TMCs received from transportation or lodging establishments with whom they book reservations. Three methods were used to effect payment to TMCs for Federal employee travel: (1) TMC is paid by contractor (Diners Club) that had issued a credit card to a Government employee pursuant to a contract with GSA; (2) TMC is paid by Diners club on behalf of GSA under GSA’s Government Travel Systems accounts; or (3) TMC is paid directly pursuant to Government Transportation Requests. The Comptroller General found that in all three cases these rebates or credits constituted a “refund” regardless of which of the costs were ultimately paid by the Federal Government. Therefore, the payments or credits paid by the TMC to GSA could be deposited to the credit of the appropriation against which the employee travel was initially charged. (65 Comp. Gen. 601, May 30, 1986).

In the case of these utility rebates, the rebates are essentially discounted prices for utility service and constitute refunds to the federal Government. DOE Order 2200.6, Change 2, states that refunds should be deposited into the same appropriation account as that from which the previously recorded disbursements were made. Then the refunds become immediately available for expenditure. The Order further states that when preparing the SF-133, "Report on Budget Execution", refunds should be netted against the obligations and outlays of the appropriation account.

In summary, the check from the utility company can be issued directly to the DOE. The rebate should be deposited to the specific appropriation originally charged, and the accounting procedures of DOE Order 2200.6, Change 2 should be followed.