



G A O

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: National Aeronautics and Space Administration—Retention of Demutualization Compensation

File: B-305402

Date: January 3, 2006

DIGEST

1. The National Aeronautics and Space Administration may not retain proceeds from the sale of demutualization compensation received from its contractor, California Institute of Technology (Caltech). Caltech had received demutualization compensation in the form of stock from Prudential Life Insurance Company on policies held for the benefit of employees who operated a NASA laboratory pursuant to a long-standing contract between NASA and Caltech. The proceeds do not qualify as a repayment to NASA, and NASA has no authority to retain and credit to its appropriation proceeds from the sale of the compensation. Accordingly, NASA must deposit them into the Treasury as miscellaneous receipts under 31 U.S.C. § 3302(b).
2. After NASA determined that proceeds from the sale of demutualization compensation were public moneys, NASA should have ensured that such proceeds were deposited in the United States Treasury the day following receipt of those proceeds. Directing Caltech officials to deposit proceeds in an interest-bearing money market account violated 31 U.S.C. § 3302(c)(1) and Treasury Regulation, 31 C.F.R. § 206.5(a)(1).

DECISION

This responds to a request for a legal decision regarding the appropriate treatment of demutualization compensation that National Aeronautics and Space Administration (NASA) received from its contractor, California Institute of Technology (Caltech). Caltech had received the demutualization compensation in the form of stock as a policyholder of Prudential Life Insurance Company (Prudential) policies that Caltech held for its employees operating the Jet Propulsion Laboratory (JPL) for NASA. NASA and Caltech agree that, under NASA's contract with Caltech, the demutualization compensation belongs to the U.S. government. NASA asked

whether the proceeds from this demutualization compensation, approximately \$17,300,000, must be deposited in the Treasury as miscellaneous receipts, pursuant to 31 U.S.C. § 3302(b), or may be retained by NASA and credited to its appropriation. For the reasons stated below, we conclude that NASA must deposit the proceeds from the demutualization compensation in the Treasury as miscellaneous receipts.

BACKGROUND

NASA has a longstanding contract with Caltech for operation of JPL in Pasadena, California. Letter to David M. Walker, Comptroller General, from John G. Mannix, Deputy General Counsel, NASA, April 27, 2005 (April Letter). Until 1993, Caltech provided JPL employees with a defined benefit plan funded by a group annuity policy with Prudential. Under the contract between NASA and Caltech, NASA reimbursed Caltech for the costs associated with JPL employees' retirement plans. Caltech terminated the defined benefit plan in 1993. Under the termination plan, some beneficiaries elected to receive accrued benefits through annuitized payments. To ensure that payments were made, Caltech continued to hold policies with Prudential.

In December 2000, Prudential reorganized from a mutual life insurance company to a stock life insurance company owned by shareholders. Under this reorganization, the Prudential policyholders, including Caltech, received demutualization compensation in the form of stock in exchange for their ownership interests in Prudential. Prudential issued 453,520 shares of stock to Caltech. Caltech notified NASA of the compensation and complied with NASA's instruction to liquidate the stock and pay the proceeds from the liquidation to the government. NASA noted that the contract with Caltech requires that

“[T]he contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government.”

April Letter at 2. In accordance with NASA's instructions, Caltech placed the proceeds in an interest-bearing account until NASA could determine whether NASA could retain the proceeds from the liquidation or whether such proceeds must be deposited in miscellaneous receipts. April Letter at 2, n.1. The amount of proceeds from the sale of the stock is approximately \$17,300,000.

DISCUSSION

An agency, with two exceptions, must deposit moneys received for the government from any source into the general fund of the Treasury as miscellaneous receipts. 31 U.S.C. § 3302(b). The two exceptions to this rule are: (1) where an agency has specific authority to retain money it collects, and (2) where moneys received qualify

as a repayment to an appropriation. *See* B-281064, Feb. 14, 2000. NASA informed us that it has no applicable authority to retain money it collects from Caltech or other sources, April Letter at 3, and our research confirms this assertion. Accordingly, for NASA to retain the proceeds from the sale of the Prudential stock as a credit to its appropriation, the demutualization compensation that Caltech received and liquidated must qualify as a repayment to NASA's appropriation.

Repayments of appropriations fall into two general categories—reimbursements and refunds. Reimbursements are amounts collected from outside sources for commodities or services furnished, which by law may be credited directly to the appropriations. *See* 65 Comp. Gen. 666, 671 (1986). The demutualization compensation does not represent a collection of funds for a commodity or service provided by NASA. The only remaining way for NASA to retain the funds and credit its own appropriation is for the demutualization compensation to be characterized as a refund.

Refunds represent repayments for excess payments that are to be credited to the appropriation from which the excess payments were made. 65 Comp. Gen. 600, 602 (1986). Refunds have been defined as “amounts collected from outside sources for payments made in error, overpayments, or adjustments for previous amounts dispersed.” *Id.* (citing Treasury Department-GAO Joint Regulation No. 1, reprinted as Appendix B to Title 7 of GAO's Policy and Procedures Manual for Guidance of Federal Agencies, *available at* www.gao.gov/special.pubs/ppm.html). *See also* OMB Circular A-11, *Preparation, Submission, and Execution of the Budget* (June 2005) at 20.10 (“Refunds are the repayments of excess payments. The amounts are directly related to previous obligations incurred and outlays made against the appropriation.”) A key component in determining whether a repayment is a refund is whether the payment represents an “excess of what is actually due.” 5 Comp. Gen. 734, 736 (1926). *See also* 69 Comp. Gen. 260 (1990) (recoveries under the False Claims Act were refunds to the extent that recovery was for reimbursement for erroneous payments); 33 Comp. Gen. 176 (1953) (recovery from a renegotiated contract price was a refund of an omitted overpayment made under the original contract price); B-139348, May 12, 1959 (refund of overcharge of public utility should be credited to appropriation from which original charge was paid).

The proceeds from the liquidation of the demutualization compensation that Caltech paid to NASA do not represent a repayment of funds that were in “excess of what was actually due;” that is, the proceeds do not reflect a repayment from Caltech of an amount that NASA had previously overpaid Caltech. At the time NASA paid allocable costs of the defined benefit retirement plan, the amounts were correct. Prudential issued the demutualization compensation to Caltech in exchange for ownership rights that Caltech had maintained as a policyholder of Prudential

policies.¹ Prudential's issuance of the stock in the reorganization of its company from a policyholder-owned company to a stock life insurance company reflected a change in the form of ownership. When Caltech liquidated the stock divesting its ownership in Prudential, the stock and Caltech's ownership in Prudential had grown to \$17.3 million. This amount represents not only the value of the ownership in Prudential held by Caltech after the termination of the defined benefit plan in 1993 but also the investment in those policies between 1993 and the date Caltech liquidated the demutualization compensation stock.

The fact that the moneys NASA received are related to the terminated retirement plans the costs for which NASA had earlier reimbursed Caltech does not make the proceeds a refund that may be credited to NASA's appropriation. NASA has provided us with no evidence to suggest that the payments it had made to reimburse Caltech's costs of JPL employees' retirement plans were made in error, subject to some readjustment in amount due, or an excessive payment on what was due. Further, there is no indication that Prudential issued demutualization compensation to Caltech to repay Caltech for overpayments that Caltech may have made to Prudential. Indeed, the demutualization compensation in question was issued to provide holders of Prudential policies a similar ownership stake in the company after it reorganized.

As the demutualization compensation cannot be properly characterized as a refund, the proceeds from the sale of the demutualization compensation that NASA ordered Caltech to pay to the government must be deposited in the general fund of the Treasury as miscellaneous receipts, in accordance with 31 U.S.C. § 3302(b).

We note that your April letter states that NASA officials directed Caltech to place the proceeds of the liquidated demutualization compensation in an interest-bearing money market account while determining whether such proceeds should be credited to NASA's appropriation or deposited in the Treasury as miscellaneous receipts. See April Letter at 2, n.1. Pursuant to federal law, a person having custody of public money "shall deposit the money without delay in the Treasury . . . [such money] shall be deposited not later than the third day after the custodian receives the money." 31 U.S.C. § 3302(c)(1). Furthermore, Treasury regulations² require agencies to make

¹ As a policyholder of a mutual insurance company, Caltech was eligible to receive surplus distributions prior to 2000. In a telephone conversation with NASA officials, we asked whether Caltech had ever received such distributions and whether Caltech had paid those distributions to NASA. The NASA officials told us that NASA had not received funds from a surplus distribution nor were officials aware that Caltech had ever received distribution from Prudential.

² Under 31 U.S.C. § 3302(c)(2), Congress authorized the Secretary of the Treasury to adopt regulations prescribing that a person in possession of public moneys deposit
(continued...)

same-day deposits, or in cases where same-day deposits are not cost-effective or practical, an agency must deposit public moneys the next day. 31 C.F.R.

§ 206.5(a)(1). The deposit timing requirements apply whether an agency deposits money in an appropriation account or as miscellaneous receipts. *See* 10 Comp. Gen. 382, 383 (1931) (statutory deposit requirements apply to receipts and credits for all accounts in the Treasury, including appropriation accounts, revolving funds, trusts, or the general fund). *See also* B-72105, Nov. 7, 1963. NASA should not have directed Caltech officials to deposit public money in a money market account. Once NASA determined that proceeds were received for the government, it should have ensured that such proceeds were deposited in an account in the Treasury by the following day to comply with Treasury regulations and statutory requirements of 31 U.S.C. § 3302(c). While we understand that NASA was unclear as to what account it should have deposited the proceeds, such dilemma is not sufficient to delay the time of deposit of public moneys in the United States Treasury.

CONCLUSION

The demutualization compensation that resulted from Prudential's corporate reorganization represented a change in the form of Caltech's ownership interest from a policyholder to a shareholder. The liquidated proceeds from the sale of the stock received represented a divestiture in ownership rights in Prudential. Because NASA has no authority to retain and credit demutualization compensation and the compensation was not a repayment of a prior expense incurred by NASA, NASA must deposit the proceeds from the liquidation of the demutualization compensation into the Treasury as miscellaneous receipts.

We also find that NASA's direction that proceeds of the demutualization compensation be deposited in a money-market account violated 31 U.S.C. § 3302(c) and applicable Treasury regulations. To comply with timing rules established by statute and regulation, NASA was required to deposit the proceeds in the account the day after receiving such proceeds. Directing that such moneys be deposited in a money market account while determining what account the proceeds should be deposited is a violation of 31 U.S.C. § 3302(c) and 31 C.F.R. § 206.5(a)(1).

/signed/

Anthony H. Gamboa
General Counsel

(...continued)

money in the Treasury during a period of time that is greater or lesser than the period of time specified by statute.