

The sole question presented for decision in this case is the authority of the Commissioner of Internal Revenue to reconsider a former decision refusing, as a matter of law, on facts about which there has at no time been any disagreement, to make the refund of the taxes in question, and make the allowance as originally claimed. The original decision of the Commissioner refusing to make the refund was an error of law, as is shown in the recent case of *Vanderbilt v. Eidman*.

The same Commissioner who refused the refund reopened the rejected claim and allowed it.

If the Commissioner, instead of disallowing a claim, had allowed it, and the allowance thereof afterwards turned out to be a mistake of law, a different question would be presented, if he should attempt to reopen and disallow the same. See *United States v. Bank of Metropolis*, Reports of the Supreme Court, vol. 15, pp. 400-401.

But where the same executive officer who is by law authorized to allow a claim disallows it, and such disallowance is the result of a clear mistake of law or fact arising from calculation, or material newly discovered evidence is afterwards produced, such executive officer is authorized to reconsider such claim and allow it. One branch of this question was fully considered in my decision of February 17, 1905, which will appear in 11 Comp. Dec., 459 et seq.

The decision of the Auditor is affirmed.

#### RENT OF BUILDINGS IN THE DISTRICT OF COLUMBIA.

The permanent appropriation made in section 4461, Revised Statutes, for the expenses of the steamboat inspection service, does not provide "in terms" for the rent of a building in the District of Columbia, and therefore the renting of a room in said District for the use of the supervising inspectors of steam vessels at their annual meeting is prohibited by the act of March 3, 1877, which provides that no building, or part of a building, shall be rented for the use of the Government in the District of Columbia unless appropriated for *in terms*.

(Comptroller Tracewell to the Secretary of the Treasury, May 11, 1905.)

By your reference, dated May 5, 1905, of a communication from the Secretary of Commerce and Labor, dated May 3,

1905, you request a reconsideration by me of my decision of May 28, 1904, in the revision of an account of Mr. W. L. Soleau, disbursing clerk, Department of Commerce and Labor, appeal No. 10344, in so far as that decision relates to an item of \$75 for the rent of two rooms in the District of Columbia from June 1 to July 16, 1903, for the purposes of a meeting of the Board of Supervising Inspectors of Steam Vessels, which item was disallowed, for the reason that the renting of the rooms was prohibited by the following provision in the act of March 3, 1877 (19 Stat., 370):

"\* \* \* hereafter no contract shall be made for the rent of any building or part of any building to be used for the purposes of the Government in the District of Columbia until an appropriation therefor shall have been made in terms by Congress, and that this clause be regarded as notice to all contractors or lessors of any such building or any part of building."

In the communication from the Secretary of Commerce and Labor he says:

"In addition to the fact that the payment of this item was specifically authorized by the head of the department under which the Steamboat-Inspection Service was at that time, the practice in the administration of this specific part of the Steamboat-Inspection Service has for many years been uniformly the same.

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"The construction uniformly placed upon this provision of law heretofore, as appears from vouchers paid by George A. Bartlett, one of the disbursing clerks of the Treasury Department, for rent of quarters for the regular annual meetings of the Board of Supervising Inspectors of Steam Vessels, held in January of 1900, 1901, 1902 and 1903, from the appropriation 'Contingent expenses, Steamboat-Inspection Service,' and the testimony of the chief clerk of the Steamboat-Inspection Service, that similar expenses have been incurred for the past twenty-five or thirty years without any question on the part of the accounting officers of the Treasury, takes the ground that the provision applies to officers of the Government whose duty and employment are wholly in the District of Columbia, and has no reference to those officers whose duties are beyond the limits of said District and who are called to Washington for special duty at widely separated periods of time. It would seem that the principle in administrative practice of adhering to established and well recognized methods of disposing of an oft-recurring question would apply in this case.

"The law under which these payments have been heretofore allowed is as follows:

"Section 4405, Revised Statutes. The supervising inspectors and the Supervising Inspector-General shall assemble as a board once in each year in the city of Washington, District of Columbia, on the third Wednesday in January, and at such other times as the Secretary of Commerce and Labor shall prescribe in joint consultation \* \* \*."

"The permanent appropriation for the expenses of this service is made in section 4461, Revised Statutes, as follows:

"The salaries of the Supervising Inspector-General, of all supervising inspectors, local inspectors, assistant inspectors and clerks provided for by this title, together with the traveling and other expenses when on official duty, and all instruments, books, blanks, stationery, furniture, and *other things necessary* to carry into effect the provisions of this title, shall be paid for, under the direction of the Secretary of the Treasury, out of revenues received into the Treasury from the inspection of steam vessels and the licensing of the officers of such vessels, which revenues, or so much of them as may be necessary for these purposes, shall be permanently appropriated therefor."

"Section 4405, Revised Statutes, given above, provides for annual meeting of the supervising inspectors of steam vessels in Washington. Section 4461, Revised Statutes, given above, provides for the payment of the expenses of the service generally.

"The method of providing quarters for the meetings of this board, which has long been followed, seems to be based upon sound considerations of economy and the welfare of the service. No other method of dealing with the matter is conceived which is entitled upon any consideration to preference over the established one. Permanent quarters, if provided, would stand vacant a large part of the year, and the construction heretofore placed upon the law whereby the act of March 3, 1877, already quoted, is not held to apply to this case, seems to be based upon wise consideration of the public service."

In considering the question of the weight to be given to a practice in contravention of law in 5 Comp. Dec., 450, I said:

"So far as I am aware, this practice of the Auditor for the Post-Office Department is quite exceptional. It certainly has not prevailed with any other Auditor since the act of July 31, 1894, went into operation, and upon inquiry I have not been able to learn of a single instance of the kind prior to that time. But even if the practice had been uniform with all the Auditors, it would have no weight. It is only when the meaning of a statute is doubtful or ambiguous that a con-

temporaneous construction by a long-continued and uniform practice is entitled as such to consideration. But a practice by a Department or office, no matter how long continued, can not contravene the plain meaning of a statute. (*The Swift Company v. United States*, 105 U. S., 691; *United States v. Graham*, 110 U. S., 219, 221; *United States v. Alger* 152 U. S., 384, 397.)"

Under a general statute like that under consideration herein, which is applicable to all branches of the Government, the practice of one Department in a single branch among numerous branches could have very little weight, even if it were not in direct contravention of an express prohibition of the statute.

I can not concur with the Secretary of Commerce and Labor that the prohibition applies only "to officers of the Government whose duty and employment are wholly in the District of Columbia, and has no reference to those officers whose duties are beyond the limits of said District and who are called to Washington for special duty at widely separated periods of time." The terms of the provision prohibit the renting of any building, or part of any building, "to be used for the purposes of the Government" in the District of Columbia. The words "the purposes of Government" are comprehensive and embrace all branches of the Government, and I think they apply to all uses for such purposes whether temporary or permanent.

Nor do I think the language of the permanent appropriation for the expenses of the Steamboat-Inspection Service contained in section 4461 of the Revised Statutes, quoted by the Secretary of Commerce and Labor in his communication, can properly be construed as providing "in terms" for the rent of any building in the District of Columbia. The words therein "and other things necessary" must be read in connection with the "things" specified immediately preceding them, namely, "instruments, books, blanks, stationery, furniture," and the general words "and other things necessary" must be regarded as having reference to things of like character to those specified.

I have the honor, therefore, to advise you that I see no reason to change my prior decision.