

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

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FILE: B-211953**DATE:** December 7, 1984**MATTER OF:** GSA recovery of SLUC costs for Storage
of IRS records.

- DIGEST:**
1. Where General Services Administration (GSA) is required by law and implementing regulations and standards issued by GSA to store and service noncurrent agency records transferred to Federal Records Centers (provided space is otherwise available) and receives appropriations for this purpose, it may not seek reimbursement for its costs incurred in storing these records under 31 U.S.C. §§ 1535 and 1536 (1982) since this would constitute an unauthorized augmentation of GSA's appropriations. However, it may enter into an agreement and recover the cost of storing current agency records since it is not required to do this and receives no appropriation for this purpose.
 2. Where General Services Administration stores and services current Internal Revenue Services (IRS) records at Federal Records Centers which it is not required to store free of charge and requests IRS to pay Standard Level User Charges (SLUC) related thereto, this constitutes a constructive assignment of space to IRS for storing records. Therefore, IRS is liable for payment of SLUC attributable to storing current records to Federal Buildings Fund.
 3. Even if current Internal Revenue Service (IRS) records are deemed stored by General Services Administration pursuant to interagency agreement calling only for reimbursement of servicing costs by IRS, IRS is required to pay Standard Level User Charges costs attributable to the storing of its current records, since all elements of actual costs (direct and indirect) which are proper are required to be reimbursed under the law. 31 U.S.C. § 1535 (1982).

The Commissioner of the Internal Revenue Service (IRS) has requested our opinion on the propriety of the National Archives and Records Service (NARS), General Services Administration (GSA) practice of assessing Standard Level User

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Charges (SLUC) for storage of certain IRS records. As discussed below, we conclude that IRS should pay to the Federal Buildings Fund, SLUC costs attributable to storing current IRS records at Federal Records Center (FRC).

BACKGROUND

Beginning in 1968, IRS and GSA entered into a series of agreements or interagency memoranda of understanding that provided for the early transfer of tax returns to all the FRCs involved in the tax return program, after the returns had been in IRS space for only 1 year. This is 2 years earlier than the usual practice. This accelerated tax return retirement schedule was apparently necessary because of a great increase in the numbers of current returns maintained on IRS premises, as opposed to "reference" returns which are not needed on a day-to-day basis but which may need to be retrieved on occasion for reference.

As part of the various agreements, IRS transferred 235 positions and sufficient salary funds to GSA in a transfer of function document because it was anticipated by both parties that the reference workload would be much higher than under the normal transfer schedule; i.e., that there would be many more requests for retrieval of stored documents than would be the case if the documents had remained with IRS for the usual 3-year period. Similar arrangements were made from 1970 through 1974, which provide for the accelerated retirement of tax returns to the Atlanta, Fort Worth, Philadelphia, Kansas City and Dayton FRC's as early as 6 to 8 weeks after processing by IRS service centers.

In 1977, the San Francisco and Denver FRCs joined the accelerated retirement program but on the basis of reimbursable agreements rather than a transfer of function document. In response to our request for its comments, GSA reports, in a letter dated February 13, 1984, that the reimbursable agreement method was employed because the IRS reference workload was increasing by an average of 22 percent per year. This greatly exceeded the number of reference returns which could be stored by using the resources provided to GSA by IRS in the aforementioned transfer of function document.

✓ These agreements between IRS and GSA provided only for IRS reimbursement of "servicing" costs of accelerated record storage but not for the storage costs themselves. Servicing costs are those incurred by GSA in searching the records, retrieving documents from files upon request of the originating agency, and refiling them after use.

New agreements were entered into for fiscal year 1982 and 1983. FRCs would furnish 9.2 million retrieval requests to IRS, using funds allotted to GSA for this purpose. IRS would provide the records centers with personnel and funds needed to process an additional 8.4 million requests in fiscal year 1982 and 7.7 million requests in fiscal year 1983.

In addition to these arrangements, IRS was informed, by letter dated August 14, 1981, that "beginning in fiscal year 1982, GSA may be required to pass on to the transferring agency all SLUC charges incurred in storing records retired to the records centers under early or accelerated transfer agreements." GSA confirmed this policy by letter dated October 16, 1981, and started to send the IRS quarterly billings. Although IRS agreed to continue payment for servicing costs for its early transfer records, it refused to reimburse GSA for their storage costs on the basis that the storage of non-current records by GSA is a statutory function of GSA for which that agency receives appropriations. It is these storage costs that are the basis of the present dispute.^{1/}

CONTROVERSY

While records storage (including related retrieval services) for other Federal agencies is a statutory function of GSA for which it has received appropriated funds, GSA draws a distinction between current records, and inactive or semi-active records. It is GSA's view that the storage of current agency records is not a statutory function of GSA and therefore, it is not precluded by the decisions of this Office from recovering its actual cost incurred in storing "current" records for the IRS. 61 Comp. Gen. 419 (1982) and 59 Comp. Gen. 415 (1980). IRS does not dispute that statement of GSA's statutory function. It contends only that the records in question are "non-current" by GSA's own guidelines. The preliminary questions are, therefore, whether the IRS' accelerated tax return program involves current or non-current records, (2) what standard should be used to make this determination, and (3) who is authorized to make the determination. Furthermore, IRS apparently is of the position that even if these records are current, SLUC costs may not be recovered since it did not agree to pay them when the transfer agreements were entered into.

^{1/} Congress has directed in its appropriations that the FRC's IRS program be done on an entirely reimbursable basis beginning in fiscal year 1984. Therefore, this dispute is limited to storage costs incurred during fiscal years 1982 and 1983.

DECISION

We find that based upon the facts presented and by applying guidelines it had established, GSA had a reasonable basis for determining that the records in question were "current" for the purpose of establishing whether GSA had to store them free of charge in FRCs. We also find that regardless of the terms of any express undertaking in effect between GSA and IRS concerning costs to be reimbursed GSA for storing IRS records, once GSA indicated that it would no longer store the records without being reimbursed SLUC costs, IRS was obligated to make the reimbursements if it desired to continue to store the records in FRCs. If it did not wish to do this, then it could have stored the records elsewhere. Of course, in doing so it would have been assessed and required to pay SLUC on space assigned to it for this purpose by GSA.

DISCUSSIONRecords Storage Requirement
Imposed by Law Upon GSA

The law clearly vests authority in GSA to operate and manage FRCs. See 44 U.S.C. §§ 2903 and 2907(1982).^{2/} It is also clear that the law vests in the Administrator of General Services authority to set standards for determining when agencies may transfer records to FRCs for storage. The Administrator of General Services is charged with the responsibility of providing guidance and assistance to Federal agencies which promote economy and efficiency in the selection and utilization of space and to promulgate standards, procedures and guidelines with respect to records creation, records maintenance and use and records disposition. 44 U.S.C. §§ 2901(2) and 2904 (1982).

"Records maintenance and use" is defined to mean any activity involving the location of records of a Federal agency and the storage, retrieval, and handling of records kept at office file locations by or for a Federal agency, 44 U.S.C. § 2901(4) (1982). Also, the law defines "records

^{2/} Many of the duties and functions vested in NARS or GSA concerning records and records management have been transferred to the National Archives and Records Administration, effective April 1, 1985. See Pub. L. No. 98-497, October 19, 1984, 98 Stat. 2280. However, this does not affect our decision which is based upon the law in effect during 1982 and 1983.

disposition" to mean any activity with respect to transfer of records to records centers. 44 U.S.C. § 2901(5)(B) (1982). Agency heads are required to comply with these provisions of law and regulations issued under them by the Administrator when implementing their agency's records management programs. 44 U.S.C. § 3102(3) (1982).

While individual agencies may be in the best position to determine their own day-to-day needs for the use of their records, it is GSA which must determine the basis on which it will allocate limited space and resources among competing Government users. To hold otherwise would result in the management and control of the FRCs being taken away from GSA, the agency charged by law with the responsibility for operating and managing them.

Thus, the Administrator of General Services has authority to promulgate reasonable standards and guidelines for determining when records may be transferred from agency office space to FRCs, so long as these guidelines are consistent with the statutory goals of promoting economy and efficiency in records management.

GSA's regulations require that in order for records to be eligible for transfer to a FRC, they not be needed to carry out "current" agency operations, 41 C.F.R. § 101-11.102-5 (1984). There is nothing that we are aware of that would suggest that this is an unreasonable distinction based upon considerations of both economy and efficiency since some trade-off in one goal may be necessary in order to obtain the other. Thus, providing space is available, non-current (semi-active or inactive) records are stored in FRCs free of charge as part of GSA's statutory duty for which it receives funding. Under the standards established by GSA, it is within its discretion whether or not to permit current records to be stored in FRCs since it does not receive appropriations for this purpose.

As mentioned above, IRS urges that based upon this distinction, its records are required to be stored by GSA free of charge since they are not "current" for IRS's purposes. In support of its position the IRS points to the definition of current records in the GSA Records Management Handbook, Disposition of Federal Records (1981), at page 65, which states:

"CURRENT RECORDS. Records that are necessary for conducting the current business of an office that must be maintained, therefore, in office space and equipment."

In addition, on page 6 of same Handbook it states:

"* * * the Federal records centers, operated by NARS, receive records that must be held for varying periods beyond their day-to-day usefulness in the office. * * *"

IRS argues that the records in issue need not be maintained in office space and equipment--otherwise they would not have been transferred to the FRCs--and they do not have day-to-day usefulness requiring their retention in IRS offices.

The IRS also refers to the GSA Records Management Handbook, Federal Archives and Records Centers (1979), at page 6, which states:

"Official files selected for transfer to a records center should meet the following criteria:

* * * * *

"--Not be needed to carry out current agency operations.

"--Be referred to only occasionally (usually not more than once a month per file drawer) in the normal course of events.

* * * * *

"If the files meet these criteria, they should be transferred to a records center regardless of their importance, their defense classification, the urgency of occasional reference, or their physical type."

IRS contends that since the records in question meet these criteria (without offering any evidence that they do in fact meet the criteria), this is further evidence that the records are non-current and thus required to be stored by GSA free of charge.

GSA, on the other hand, argues that using these same criteria, the records in question are, in fact, current. It points out that under the criteria set forth above for

selecting records for transfer to FRCs, the records should be referred to only occasionally (usually not more than once a month per file drawer) in the normal course of events. Then it indicates that IRS exceeds this standard as follows:

"In order to estimate the number of cubic feet of records in an office, we use the following guideline. 'Each full letter-size file drawer is equal to 1.5 cubic feet of records.' It follows that one reference per file drawer would be the same as one reference per 1.5 cubic feet. Using this ratio, the single reference per cubic foot figure calculates to 0.67 references per cubic foot per month. The annual rate would be 8 requests per cubic foot per year. During each of the years in question, IRS made approximately 13.2 million requests for the tax returns retired under the early and accelerated retirement agreements. Since the cubic feet of records related to the SLUC question in FY 1982 and FY 1983 were 1,049,761 and 1,071,906 respectively, the reference rates for those two years were 12.6 and 12.3 per foot per year. The rates for both years are well above the 'yardstick' figure of 8 per foot developed from the one reference per file drawer guideline."

Based upon the foregoing, we conclude that GSA had a reasonable basis for determining that the IRS records in question here were "current" under its guidance, and thus was not required to store these records without charge, since it did not receive appropriations for that purpose.^{3/}

Payment of SLUC Costs

Since GSA was not required to store current IRS records free of charge, their storage remained the responsibility of IRS. If IRS were to have stored these records in space

^{3/} Furthermore, this apparently was the view of the IRS since it agreed to pay servicing costs connected with storing these records in FRCs. If it was the duty of GSA to store these records, it would also have been their duty to provide related retrieval and refiling services.

assigned to it by GSA,^{4/} IRS would have been required to pay SLUC calculated on the basis of the square footage of space assigned to it for this purpose multiplied by the commercial rate for comparable space. See 40 U.S.C. § 490(f) & (j) (1982); the implementing regulations set forth in the Federal Property Management Regulations, Part 101-21, 41 C.F.R. Part 101-21 (1984); and B-186818, September 22, 1976 and B-177610, September 3, 1976. We see no reason why the storing of current IRS records by GSA in FRCs should not be viewed as a constructive assignment of this space to the IRS for which it became liable for the payment of SLUC costs. ✓

Furthermore, even if this storing of the current IRS records by GSA in FRCs was governed by the Economy Act^{5/}, 31 U.S.C. §§ 1535, 1536 (1982) (formerly 31 U.S.C. § 686 (1976)), it is clear that reimbursement of SLUC charges attributable to the performance of work or services are recoverable by the performing agency, as part of the actual cost recovery requirement imposed by the Economy Act. This was made clear in our decision concerning Economy Act reimbursements by Washington National, and Dulles International Airports to other components of the Federal Aviation Administration, 57 Comp. Gen. 674 (1978). There, in analyzing what cost items must be recovered under the law by performing agencies, we stated:

"The Economy Act clearly requires the inclusion ✓
as actual cost of all direct costs attributable to
the performance of a service or the furnishing of
materials, regardless of whether expenditures by the
performing agency were thereby increased. Other-
wise, the performing agency would be penalized to
the extent that its funds are used to finance the
cost of performing another agency's work, while the
requisitioning agency's appropriations are augmented
to the extent that they now may be used for some
other purpose.

^{4/} GSA has been given control over most Government building space and is responsible for assigning space within buildings for agencies for their use. See 40 U.S.C. §§ 483(g) & 490(e) (1982) and §§ 1 & 2 of Reorganization Plan No. 18 of 1950, effective July 1, 1950, 15 Fed. Reg. 3177, 64 Stat. 1270, 40 U.S.C. § 490 note (1982).

^{5/} In the absence of any other provision of law authorizing interagency agreements for the performance of service or for the use of property, the Economy Act governs.

"For the same reasons, certain indirect costs are recoverable as actual cost. However, for the reasons given above, only those indirect costs which are funded out of the performing agency's currently available appropriations and which bear a significant relationship to the performing of the service or work or the furnishing of materials are recoverable. * * * If an item of indirect cost does not bear a significant relationship to the service or work performed or the materials furnished, and is not funded from currently available appropriations, it should not be included as an element of actual cost for purpose of 31 U.S.C. § 686 (absent some other overriding consideration) * * *" (Emphasis supplied.) 57 Comp. Gen. 682.^{6/}

We note that SLUC costs are generally financed by agencies out of annual appropriations made available for this purpose. Furthermore, they bear a significant relationship to the services performed and the space furnished. Thus, SLUC charges attributable to space used when performing work or services or providing space to another agency are required to be reimbursed under 31 U.S.C. § 1535 (1982). This is the case even though the agreement between GSA and IRS did not specifically require it since under 31 U.S.C. § 1535 (1982), all proper elements of actual cost must be reimbursed in order to avoid augmenting the requisitioning agency's appropriations. While GSA may not have sought to recover SLUC costs attributable to storing current IRS records prior to fiscal year 1982 (the cost for prior fiscal years being borne by GSA's annual appropriations^{7/}), once notified that SLUC

^{6/} While this decision also indicates that indirect costs (unlike direct costs) were not recoverable unless they would not "otherwise have been incurred", this distinction is not supported either by the law or reason and has never been followed by this Office when applying the law. For example, personnel costs which are fixed by law and otherwise incurred by a performing agency are required to be recovered. See 57 Comp. Gen. 678-679. We see no reason for distinguishing between direct and indirect costs in this regard.

^{7/} A questionable practice in light of 31 U.S.C. § 1301(a) (1982).

✓ would be charged, IRS was responsible for paying assessed charges to the Federal Buildings Fund^{8/} if it desired to continue to store its current records with GSA.

✓ Thus failure to spell out in the interagency agreement what costs would be reimbursed would not serve to prevent recovery of the performing agency's actual costs as required by the Economy Act. Therefore, for the foregoing reasons, IRS is required to reimburse GSA for SLUC costs attributable to its storing current IRS records in FRCs.

Acting

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^{8/} Reimbursement for work or service performed or for materials supplied under the Economy Act must also be credited to the fiscal year in which they are earned, irrespective of when reimbursements are collected. If the appropriation which earned the reimbursements has expired for obligation purposes at the time of collection, then reimbursements can only be credited to the expired account or to the appropriate successor account. 31 U.S.C. § 701(c) (1982), B-194711-O.M., January 15, 1980.

Thus, any reimbursement to GSA for SLUC costs it paid from its annual appropriations would have to be deposited to the general fund of the Treasury as surplus authority for the expired appropriation account and would be unavailable to GSA for incurring new obligations. However, since GSA has not paid the 1982 and 1983 SLUC charges on behalf of IRS this would not be a problem. Reimbursement would go directly from IRS to the credit of the Federal Buildings Fund.