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

B-179899

NOV 28 1973

Seaboard World Airlines
John F. Kennedy International Airport
Jamaica, New York 11430

Attention: Mr. Eli C. Hecht
Controller - Management Services

Gentlemen:

Reference is made to your letter of March 28, 1973, alleging an erroneous collection of excise taxes by the Department of the Air Force from Seaboard World Airlines (Seaboard) on certain purchases of fuel by Seaboard from the Department.

You advise that:

> "* * * we undertook to file a claim for refund with the Internal Revenue Service as suggested in a letter from the Department of the Air Force on 27 March 1972. An appropriate Form 843 Claim for Refund was filed with the Internal Revenue Service who now indicates that this form was not filed within the required 90-day period. The invoice from the Air Force was received after this period had expired. The Internal Revenue Service stated that the Department of the Air Force has a right to file a claim for a refund within a three year period since they were the collecting agency. They have therefore suggested that we resubmit our claim to the Air Force."

You suggest that resubmission of such claim to the Air Force would only result in additional correspondence. Accordingly you request that our Office review and honor your claim of $29,796.69.

Section 6406 of the Internal Revenue Code of 1954, 26 U.S.C. 6406, provides that:

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"§6406. Prohibition of Administrative review of decisions.

"In the absence of fraud or mistake in mathematical calculation, the findings of fact in and the decision of the Secretary or his delegate upon the merits of any claim presented under or authorized by the internal revenue laws and the allowance or nonallowance by the Secretary or his delegate of interest on any credit or refund under the internal revenue laws shall not, except as provided in subchapters C and D of chapter 76 (relating to the Tax Court), be subject to review by any other administrative or accounting officer, employee, or agent of the United States."

In view of the finality accorded decisions of the Secretary of the Treasury or his delegate regarding internal revenue matters under the foregoing provision of law, your question is a matter for determination by the Commissioner of Internal Revenue and not by this Office.

We note that the Department of the Air Force contends that the taxes in question were properly collected. Hence, we suggest you request a ruling in the matter from the Internal Revenue Service (IRS), pursuant to 26 C.F.R. 601.201, as distinguished from a claim for refund. A ruling in your favor would appear to be a sufficient basis for the Air Force to file a claim with IRS for a refund of the excise taxes previously paid by you and subsequent refund thereof by the Air Force to you.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States