

**DECISION**



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

50995  
97471

FILE: B-141529

DATE: AUG 20 1975

**MATTER OF:** Responsibility of Administrator of Urban Mass Transportation to reimburse Washington Metropolitan Area Transit Authority for interest on borrowings for current metrobus operating expenses.

**DIGEST:**

The National Capital Transportation Act (NCTA) of 1972 provides for additional regional subway construction financing by authorizing the Secretary of Transportation to guarantee up to \$1.2 billion of obligations of the Washington Metropolitan Area Transit Authority (WMATA), and to reimburse WMATA one-fourth of its interest costs on obligations issued after its enactment. The Secretary may not, under the authority of the NCTA of 1972, reimburse WMATA for one-fourth of its interest costs on borrowings for current Metrobus operating expenses.

The Administrator, Urban Mass Transportation Administration (UMTA), Department of Transportation, by letter dated May 12, 1975, has requested our decision as to whether he may lawfully comply with the request of the Washington Metropolitan Area Transit Authority (hereinafter referred to as WMATA or the Transit Authority) to be reimbursed for one-fourth of \$182,221.29 in interest which WMATA has paid to local financing institutions on borrowings made for current Metrobus operating expenses since the effective date of the National Capital Transportation Act of 1972, Pub. L. No. 92-349, 86 Stat. 464 (July 13, 1972). D.C. Code § 1-1441 note (1973).

The Administrator previously refused the request of WMATA for reimbursement of the amount in question and WMATA has requested the Administrator to reconsider his decision. That request is now pending, and is the occasion for the Administrator's submission of the question to us.

The relevant statutory provisions are sections 9 and 10 of the National Capital Transportation Act of 1969, Pub. L. No. 91-143, 83 Stat. 320 (December 9, 1969), as added by section 101 of the National Capital Transportation Act of 1972 (hereinafter referred to as the NCTA of 1972). These sections provide, in pertinent part, as follows:

"Sec. 9. (a) The Secretary of Transportation is authorized to guarantee, and to enter into commitments to guarantee, upon such terms and conditions as he may prescribe, payment of principal of and interest on bonds and other evidences of indebtedness (including short-term notes) issued with the approval of the Secretary of the Treasury by the Transit Authority under the Compact. No such guarantee or commitment to guarantee shall be made unless the Secretary of Transportation determines and certifies that—

"(1) The obligation to be guaranteed represents an acceptable financial risk to the United States and the prospective revenues of the Transit Authority (including payments under section 10) furnish reasonable assurance that timely payments of interest on such obligation will be made; [and that certain other conditions, not here relevant, are met]

\* \* \* \* \*

"(d) The interest on any obligation of the Transit Authority issued after the date of the enactment of this section shall be included in gross income for the purposes of chapter 1 of the Internal Revenue Code of 1954.

\* \* \* \* \*

"Sec. 10. The Secretary of Transportation shall make periodic payments to the Transit Authority upon request therefor by the Transit Authority in such amounts as may be necessary to equal one-fourth of the total of the —

"(1) net interest cost, and

"(2) fees, commission, and other costs of issuance, which the Secretary determines the Transit Authority incurred on its obligations issued after the date of the enactment of this section."

The Administrator states that the authority of the Secretary under sections 9 and 10 has been delegated to him.

Section 9(a) is authority for the Administrator, as the delegate of the Secretary of Transportation, to guarantee bonds or notes of WMATA which are issued with the approval of the Secretary of the Treasury, and which meet certain conditions prescribed by the Secretary of Transportation. However, section 9(d) and section 10 are not by their terms limited to obligations guaranteed under section 9(a), but speak of obligations "issued after the date of the enactment of this section." In a letter to the Administrator, dated January 14, 1975, the General Counsel of WMATA relies on this distinction to argue, in effect, that by virtue of section 10, the Secretary is obliged to reimburse WMATA for one-fourth of the interest on all its obligations issued after July 13, 1972, the date of enactment of section 10, notwithstanding that the obligations may not have been guaranteed pursuant to section 9(a).

The General Counsel of WMATA also states that in the original draft of the bill which was the derivative source of the NCTA of 1972, sections 9(d) and 10 were applicable only to guaranteed obligations of WMATA, but that those draft sections were changed prior to the introduction of the bill, at the behest of the Department of the Treasury, in order to broaden their scope to include all WMATA obligations. In support of this contention, the General Counsel offers a letter, dated May 27, 1971, from the Acting General Counsel, Department of the Treasury, to the Director, Office of Management and Budget. The letter states that the Department of the Treasury believes that "all taxable borrowings by WMATA should receive the proposed Federal interest subsidy of 25 percent, regardless of whether such borrowings are expressly guaranteed by the Secretary of Transportation." The General Counsel of WMATA states that the Treasury Department offered a redraft of the bill to give effect to this suggestion and that the language of the redraft is incorporated in sections 9(d) and 10 of the act.

The position of the Chief Counsel, UMTA, as set forth in a memorandum to the Administrator, is essentially that:

"The language of the foregoing provisions [of the NCTA of 1972], in my opinion, gives no evidence of a Congressional intent that obligations of WMATA (including short-term notes) other than those issued with the approval of the Secretary of the Treasury and guaranteed by the Secretary of Transportation under authority of Section 101 of the National Capital Transportation Act of 1972 (Sections 9, 10, 11 and 12 of the National Capital Transportation Act of 1969 as amended) be made eligible

for interest subsidy. All of the provisions of Section 101 constitute a single statutory scheme by which the Federal Government guarantees the payment of principal and interest of and subsidizes the payment of interest on indebtedness incurred, under certain statutory restrictions and safeguards, for the purpose of constructing the 'Metro' rail rapid transit system. There is no indication anywhere of an intent to authorize a general Federal subsidy of all WMATA's interest costs and other costs of borrowing money.

"The legislative history of Public Law 92-349 [the NCTA of 1972] supports this view. \* \* \*."

Although the matter is not wholly free from doubt, we believe the better view is that Congress did not intend, in enacting the NCTA of 1972, to provide an interest subsidy for obligations of WMATA unconnected with METRO financing. We will recapitulate briefly the circumstances leading to the enactment of the NCTA of 1972.

WMATA was formed following the approval by Congress of the terms of the Washington Metropolitan Area Transit Compact. Pub. L. No. 89-774, 80 Stat. 1352 (November 6, 1966). The Compact, among the District of Columbia, Maryland, and Virginia, was intended to facilitate the development of a system of rail rapid transit, as well as other public transportation facilities, serving the National Capital Region. The National Capital Transportation Act of 1969, authorized the development of the rapid rail transit system (METRO) at a cost of \$2.5 billion, with Federal contributions of two-thirds of the net construction cost, and the remaining one-third of the cost to be financed by means of revenue bonds issued by WMATA.

A study by WMATA in 1971 of METRO construction progress, cost trends, and financing, led to the conclusion that there had been a net increase of \$441 million in project construction costs since the original estimate of \$2.5 billion. Moreover, it was found that "\* \* \* it would be practically impossible to successfully place the tax-exempt bonds which [WMATA] was authorized to issue \* \* \*." S. Rep. No. 92-931, 4 (1972). Faced with these problems, WMATA proposed a revised financial plan, which became the basis for the NCTA of 1972:

"Under the revised financial plan, the net additional project cost will be \$450 million to be shared on 2/3-1/3 ratio between the Federal and local governments. Second, the Transit Authority will issue only obligations which

are taxable. Third, an interest subsidy of 25% on the interest and marketing costs of placing its obligations will be paid by the Federal Government to the Transit Authority. The amount paid will be recovered from the money received by the Federal Government from taxes on income from such bonds. It is estimated that the amount paid will be sufficient to cover the debt service on an additional \$300 million of bonds, increasing the total issue of bonds which may be guaranteed to \$1.2 billion. No additional outlay is required from the Federal Government. Fourth, local jurisdictions will be required to pay an additional \$150 million as matching funds, thus preserving the Federal-local matching ratio of 2/3-1/3. Fifth, the District of Columbia is authorized to increase its share from \$216.5 million to \$269.7 million, and the borrowing authority of the District of Columbia is increased by a like amount to secure the necessary funds." S. Rep. No. 92-931, 4 (1972).

The revised financial plan was originally embodied in two bills, H.R. 11877 and S. 2297. The bills, which are identical, were endorsed by the Department of Transportation, WMATA, and the District of Columbia. They were approved by the Office of Management and Budget as being in accord with the President's program, and they were supported by all the local jurisdictions. Statement by Representative Broyhill, Joint Hearings on S. 2297 and H.R. 11877 before the Senate Committee on the District of Columbia and the Subcommittee on Business, Commerce, and Fiscal Affairs of the House Committee on the District of Columbia, 92d Cong., 2d Sess. 13 (hereinafter referred to as Hearings). See also letter to the Chairman, House District Committee, from the Department of Transportation. Hearings, 29. The bills were also supported by the Department of the Treasury, as will be discussed below.

Although no action was taken on either of these bills, H.R. 15507, 92d Congress, was subsequently introduced, sponsored by some of the same Members of the House who sponsored H.R. 11877. H.R. 15507 is the derivative source of the NCTA of 1972. The Committee reports on H.R. 15507 rely on the hearings and correspondence concerning H.R. 11877 and S. 2297. S. Rep. No. 92-931; H.R. Rep. No. 92-1155. Title I of H.R. 15507, dealing with Federal guarantees of WMATA obligations is similar in most respects to title I of H.R. 11877.

The revised financial plan embodied in the NCTA of 1972 was primarily intended to make possible the sale of additional revenue

bonds of WMATA to finance capital costs of METRO. Virtually all of the discussion in the legislative history of the interest subsidy program is in terms of that purpose. No consideration was given to funding other possible activities of WMATA, such as operation of a bus system. Indeed, legislation authorizing the acquisition and operation by WMATA of the private bus companies was not enacted until October 21, 1972 (Pub. L. No. 92-517, 86 Stat. 999), 3 months after the enactment of the NCTA of 1972.

Moreover, the NCTA of 1972 amended the NCTA of 1969, by adding to it new sections 9, 10, 11, and 12. The NCTA of 1969 was also concerned entirely with developing what was referred to therein as the "Adopted Regional System," which was the proposed regional rapid rail transit system, or what is also called METRO. Section 2(1), Pub. L. No. 91-143, 83 Stat. 320. The NCTA of 1969 in turn replaced the NCTA of 1965, Pub. L. No. 89-173, 79 Stat. 663, which also was enacted to authorize and fund a rapid rail transit system.

In view of the purpose of the NCTA of 1972 and of the previous acts cited--to enable the financing of METRO construction--we would be reluctant to hold that the 1972 amendment authorizes an interest subsidy on WMATA obligations for operation of a bus system or for any other purposes unrelated to METRO construction, without some indication in the legislative history that this was intended. As shown above, the legislative history and context of the NCTA of 1972 suggest that it was intended solely for METRO funding. Accordingly, we do not believe that the Administrator is authorized to pay the interest subsidy to WMATA for borrowings for current Metrobus operating expenses.

The Chief Counsel, WMATA, as noted above, bases his contention that the subsidy is payable on all WMATA obligations in large part on the views of the Department of the Treasury as expressed in the letter, referred to above, from the Acting General Counsel of the Treasury concerning the draft of the bill which became the NCTA of 1972. While this letter was apparently not before the Congress and is not, strictly speaking, part of the legislative history of the 1972 act, the views expressed therein are consistent with the language of the act, although not necessarily supportive of the theory advanced by WMATA.

It appears to us that nothing in the Treasury Department letter is inconsistent with the view that the interest subsidy was not intended to apply to WMATA obligations other than those for financing METRO construction. The letter states, with respect to the taxation provision of the draft bill, that it would

"\* \* \* have the effect of subjecting to Federal income taxation the interest on only those Washington

Metropolitan Area Transit Authority (WMATA) obligations which are expressly guaranteed by the Secretary of Transportation. There is no provision in the bill for taxation of the interest on those WMATA obligations which might be issued without an express Federal guarantee but which, in fact, would be effectively secured by the Secretary's guarantee. The direct guarantee by the Secretary of Transportation of up to \$1.2 billion of WMATA obligations under the bill would cover all of the long-term financing now contemplated by WMATA for the construction of the metro. Thus, if WMATA were to adopt the customary procedure of short-term borrowings, prior to the arrangement of permanent financing, such short-term borrowings, although not expressly guaranteed, would be eventually paid off from the proceeds of fully guaranteed long-term issues. Such an arrangement would amount to an effective Federal guarantee of tax-exempt obligations in the market and would be clearly contrary to the policies of the Treasury and the Administration.

"Accordingly, as a condition to providing the Federal guarantee on WMATA's permanent financing, all borrowings by WMATA should be on a taxable basis."  
(Emphasis supplied.)

The bill which was ultimately submitted to the Congress on behalf of WMATA, H.R. 11877, with the approval of the Treasury Department (Hearings, 39), did not provide explicitly for guarantee of short-term notes, as did H.R. 15507, the later version of the proposed legislation and as does the act. H.R. 11877 (and the corresponding Senate bill, S. 2297), provided only that the Secretary of Transportation could guarantee "\* \* \* payment of bonds and other evidences of indebtedness \* \* \*."

The Treasury Department, in proposing that section 9(d) make taxable all WMATA obligations, and not merely those expressly guaranteed, was thus evidently assuming that short-term borrowings would not necessarily be guaranteed. The recommendation that all borrowings by WMATA be on a taxable basis was based on the premise that the short-term borrowings, since they would be repaid from guaranteed bond proceeds, were in effect also secured by the Federal guarantee. It is clear, in the context of the letter, that Treasury was concerned only with borrowings for METRO construction, since it is only such borrowings which would be repaid from "\* \* \* the proceeds of fully guaranteed long-term issues \* \* \*," and hence in effect also guaranteed.

The letter goes on to discuss the interest subsidy which is here at issue:

"The Department also believes that all taxable borrowings by WMATA should receive the proposed Federal interest subsidy of 25 percent, regardless of whether such borrowings are expressly guaranteed by the Secretary of Transportation. Such a subsidy would provide WMATA with an average net borrowing rate comparable to the market rates paid by other public bodies borrowing on a tax-exempt basis with a high credit standing. \* \* \*

"The payment of a 25 percent interest subsidy on WMATA's taxable obligations, including nonguaranteed obligations, would clearly be in the Federal interest as compared with tax-exempt borrowings. As the President indicated in his April 7, 1971, message on the District of Columbia, making the WMATA obligations taxable would provide a revenue flow-back to the Treasury which would permit the Federal Government to cover 25 percent of the Authority's interest cost. Such a subsidy on all WMATA obligations would be in accord with the provisions in the Administration bill in the 91st Congress, which was resubmitted this year, which would make taxable the interest on borrowings by the District of Columbia and would also provide a Federal interest subsidy of 25 percent on such borrowings."

As the letter and the legislative history of the act make clear, the interest subsidy is linked in principle to the taxability of the obligations, and to the guarantee. A Federal guarantee of WMATA obligations, in Treasury's view, should not be made unless the interest paid on those obligations is taxable. Hearings, 30-31. Since WMATA would have to pay higher interest rates on taxable obligations, the interest subsidy is intended to offset the additional interest cost to WMATA, while the cost to the Federal Government of the interest subsidy would in turn be offset by additional tax revenues resulting from making the WMATA obligations taxable. Id.

We think that the Treasury Department letter can be taken to mean no more than that borrowings which are "effectively guaranteed" -- because, although not expressly guaranteed, they would be repaid from the proceeds of guaranteed borrowings--should be taxable, and that the interest subsidy should be paid on such borrowings. Since, under the NCTA of 1972, express guarantee of short-term notes is authorized,

it is unlikely that the problem addressed by Treasury would now arise. In any event, however, borrowings for Metrobus operating expenses would not be considered to be effectively guaranteed in this sense because they would not be repaid from the proceeds of guaranteed bonds. Hence, the rationale for the interest subsidy would not apply to such borrowings. In sum, we do not find the Treasury Department letter necessarily inconsistent with the conclusion set forth above, that the interest subsidy may not properly be paid by the Administrator with respect to borrowings for current Metrobus operating expenses. Rather, it may be paid only with respect to borrowings, whether guaranteed or not, which are for the purpose of METRO construction.

The Administrator may therefore not comply with the request of WMATA for reimbursement of one-fourth of interest paid to financing institutions on borrowings for current Metrobus operating expenses.

R. P. KELLER

Deputy } Comptroller General  
of the United States