

August 27, 1997  
L-97-31

**TO** : Peter A. Larson  
Chief Financial Officer  
*Through:* Kenneth P. Boehne  
Director of Administration

**FROM** : Catherine C. Cook  
General Counsel

**SUBJECT** : Coordination with Other Government Agencies -  
GSA - Overpayments on GSA Audits

This is in response to your memorandum of July 25, 1997, wherein you inquire as to whether overpayments in transportation payments made to RRB vendors discovered in a General Services Administration audit should be returned to the Railroad Retirement Account or deposited to the Treasury as general revenues.

A carrier or freight forwarder presenting a bill for transporting an individual or property for the United States may receive payment for such services subject to audit of the Administrator of General Services pursuant to section 3726 of title 31 of the United States Code. Section 3726(d) of title 31 provides:

At least annually, and as determined by the Administrator, after making adequate provision for expense of refunds to carriers, transportation audit postpayment contracts, contract administration, and other expenses authorized in subsection (c), overpayments collected by the General Services Administration shall be transferred to miscellaneous receipts of the Treasury. A report of receipts, disbursements, and transfers (to miscellaneous receipts) pursuant to this section shall be made annually in connection with the budget estimates to the Director of the Office of Management and Budget and to the Congress. [Emphasis supplied].

Thus, as you can see, the statutory language is unambiguous with respect to the disposition of the overpayments. They are to be returned to the general revenue.

A question similar to the one raised here, arose with respect to the Competitive Equality Banking Act of 1987 (Public Law 100-86), which provided that all unnegotiated Treasury checks issued prior to October 1, 1987, were to be cancelled and their proceeds, after payment of administrative expenses, were to be deposited to miscellaneous receipts of the Treasury. Despite our arguments to the contrary, Treasury was adamant that the proceeds of unnegotiated checks covered by the statute were required to be returned to general revenues and not to railroad retirement and railroad unemployment insurance trust funds on which they were drawn.

In view of the mandatory language in 31 U.S.C. § 3726(d), it is clear that Treasury would take the position that the overpayments about which you inquire may not be returned to the Railroad Retirement Board's trust funds.