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UNITED STATES GENERAL ACCOUNTING OFFICE
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MAR 23 1979

B-146285

Mr. Roderic A. Sherman, CPA
Gordon & Sherman
Drawer A
26 State Street
Montpelier, Vermont 05602

Dear Mr. Sherman:

This responds to your request to Mr. Staats for clarification of the audit requirement in the State and Local Fiscal Assistance Act of 1972, as amended, 31 U.S.C. §§ 1221 et seq. (1976) (Revenue Sharing Act). Specifically, you wish to know whether an audit would be required if a recipient government's entitlement is less than $25,000 for any of the fiscal years within any given 3-year period during which an audit is required by the Act. While you are not entitled by statute to a formal decision by the Comptroller General, we are happy to furnish you with the following information.

The purpose of the Revenue Sharing Act is to provide State governments and units of local government with a specified portion of Federal individual income tax collections to be used by them in accordance with local needs. With regard to the audit requirement, the Act provides that:

> "Each State government and unit of local government which expects to receive funds under subchapter I of this chapter for any entitlement period beginning on or after January 1, 1977 (other than a government to which an election under paragraph (2) applies with respect to such entitlement period), shall have an independent audit of its financial statements conducted for the purpose of determining compliance with this chapter, in accordance with generally accepted auditing standards, not less often than once every 3 years."
> 31 U.S.C. § 1243(c)(1).

This requirement does not apply (except where an audit is required by State or local law) to a State government or unit of local government--

> "for any fiscal period in which such government receives less than $25,000 [in revenue sharing funds] * * *." 31 U.S.C. § 1243(c)(4)(A).

Under the Act, the Secretary of the Treasury is authorized to prescribe such regulations as may be necessary or appropriate to carry out the provisions of the Act. 31 U.S.C. § 1262. Pursuant to this authority, delegated to the Office of Revenue Sharing, regulations implementing the Revenue Sharing Act were issued. 31 C.F.R. §§ 51.0 et seq. (1977).

While the term, "fiscal period" as used in 31 U.S.C. § 1243(c)(4)(A), is not defined in the Act or the legislative history of the Act, the Office of Revenue Sharing has defined that term by regulation to mean "fiscal year." The regulation implementing 31 U.S.C. § 1243(c)(4)(A) provides that the requirement for an audit not less often than once every 3 years shall not apply where--

> "(2) The recipient government's entitlement for any of its fiscal years is less than $25,000 except where there is a State or local law requiring an audit * * *." 31 C.F.R. § 51.101(e). (Emphasis added.)

You state in your letter that--

> "Recently, however, the Office of Revenue Sharing has taken a different position. They now say that an audit would be required if the recipient government's entitlement is more than $25,000 in any of the three years covered by the 1976 Amendment. I believe the Office of Revenue Sharing's interpretation of the act may be inconsistent with the intent of Congress as expressed in the law."

We do not really think that the informal guidance you describe represents a change in policy, but only a restatement of the requirement. The regulations state the requirement in negative terms--the requirement for an audit shall not apply where . . . etc. Your advice was stated as an affirmative requirement. The result is the same; receipt by the government of more than $25,000 in any of the fiscal years that make up the 3-year period triggers the audit requirement, but only for the particular year in which the entitlement exceeded $25,000. We might point out that under the statute, the Office of Revenue Sharing could presumably require an annual audit for every year in which the recipient receives at least $25,000 rather than authorizing an audit once every 3 years.

We concede that it may be possible to interpret the audit exemption 31 U.S.C. § 1243(c)(4)(A), differently. However, it should be noted that under the well established rule of statutory construction--

> "the practical construction given to an act of Congress, fairly susceptible of different constructions, by those charged with the duty of executing it is entitled to great respect and, if acted upon for a number of years, will not be disturbed except for cogent reasons." McLaren v. Fleischer, 256 U.S. 477, 481 (1920).

Normally, if we find that our interpretation of a statutory provision differs significantly from the interpretation of the agency charged with its administration, we would raise the matter with that agency. However, in this case, we do not believe the interpretation given the audit exemption by the Office of Revenue Sharing is unreasonable. Accordingly, we will not pursue this matter any further.

We trust that we have answered your question satisfactorily.

Sincerely yours,

Rollce Efros

Mrs. Rollce Efros
Assistant General Counsel