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

B-198251 March 27, 1980

The Honorable Henry Bellmon
United States Senate

Dear Senator Bellmon:

In response to your letter of March 24, 1980, we have examined Section 102 of H.R. 3919, the Crude Oil Windfall Profit Tax Act of 1980, and offer the following comments:

1. Subsections (a) and (b) address the manner in which "net revenues" of the windfall profit tax, as defined by subsection (c), are to be accounted for. Instead of placement into miscellaneous receipts, these revenues are to be segregated into separate accounts and further divided into sub-accounts for specific uses. In our view, the "placement" mandated is analogous to the creation of trust funds, although not so labeled.

2. Of course, none of these revenues can be obligated or spent except "in consequence of appropriations made by law." (Article I, section 9 of the United States Constitution.) Subsection (d) is evidently intended to set this process in motion by requiring the President to submit proposals for using this money (within the constraints of subsection (b)), as part of his annual budget submission to the Congress. The wording of subsection (d)(1) does not really achieve this purpose, however. It directs the President to propose "an allocation of the net revenues among the uses set forth in subsection (b)." However, the allocation has already been accomplished by means of the specification of percentages in subsection (b). We suggest instead that the President be required to propose the manner in which he wishes to use the funds within each broad purpose category established by subsection (b).

3. If the Congress appropriates the revenues for the specific purposes and in the manner proposed by the President, no further legislation would be necessary to enable the President to carry out his spending plan. However, it should be noted that for some of the purposes specified in subsection (b), further authorizing legislation would be necessary in order to avoid a "point of order" objection when the appropriation is being considered. For example, we think an amendment to the Internal Revenue Code might be necessary to spend funds for "income tax reductions." Similarly, if the President proposed to spend the revenues for a particular energy program which has not been authorized by the Congress, further authorizing legislation might be necessary before an appropriation for this particular program will be considered.

   H.R. 3919 is not really concerned with this phase of the appropriation process. The point we wanted to make is that we do not consider this bill, by itself, to be providing authorizing legislation for programs and purposes not already authorized by law.

4. The bill is silent as to whether the Congress can appropriate not only revenues for the current fiscal year but also revenues unused and remaining in the account from previous fiscal years. Because the accounts so closely resemble trust funds, it appears that the Congress would have this authority. We suggest, however, that the legislation specify the Congress' intent.

5. Section 102(e) provides that the Secretary of the Treasury shall report to the Congress annually "(2) the actual disposition for such fiscal year of such revenues among the uses specified in subsection (b)." The word "disposition" is not one commonly used in referring to financial reports. We suggest that the Congress probably would want the report to include the amounts appropriated, obligated and disbursed. The Congress may

desire to provide that the report(s) for previous years also be updated annually until all disbursements have been made for each given year.

Should you have any questions on our comments, you may contact Milton J. Socolar on 275-5205.

Sincerely yours,

MILTON SOCOLAR

For the Comptroller General
of the United States