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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548



OFFICE OF GENERAL COUNSEL

IN REPLY
REFER TO: B-195496 (THK)

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AUG 31 1979

Mr. Edgar Unker
3100 Ocean Parkway
Brooklyn, New York 11235

Dear Mr. Unker:

This letter concerns your request to the Comptroller General of July 16, 1979, proposing that you be allowed to retain up to 1138 hours of restored annual leave. Your employing agency, the Internal Revenue Service, has informed you the leave would be forfeited to the extent it is not either used before the end of the current leave year, i.e., January 12, 1980, or taken as a lump-sum payment should you retire by that date.

This annual leave was restored to you in 1977 because of an unjustified or unwarranted personnel action previously taken against you. In accordance with 5 CFR § 550.804(f) (1978) such restored annual leave "must be scheduled and used by the end of the leave year ending two years * * * after the date on which the annual leave is credited * * *." This limitation was imposed by the U.S. Civil Service Commission pursuant to the authority of Public Law 94-172, December 23, 1975. Senate Report 94-536, December 11, 1975, reported favorably on Public Law 94-172, which amended 5 U.S.C. § 5596 to allow restoration of all the annual leave that would have been earned during the period of separation. However, leave in excess of the employee's annual leave ceiling was required to be credited to a separate leave account. The Senate Report (page 3) specifically states that "[t]he restored leave then will be available for use by the employee within reasonable time limits to be prescribed by regulations of the Civil Service Commission."

Accordingly, the Internal Revenue Service correctly informed you concerning the mandatory limitation of your leave by 5 C.F.R. § 550.804(f). We regret we cannot give you a more favorable reply.

Sincerely yours,

Robert L. Higgins

Robert L. Higgins
Assistant General Counsel