

APPROPRIATION: Present claim for a refund may be assigned.
REFUND:

Blair

FILED
13

July 29, 1948

Mr. Edmund Burke
Supervisor
Department of Liquor Control
Jefferson City, Missouri

8-6

Dear Mr. Burke:

Your opinion request of recent date has been assigned to the writer for answer. In said request you state:

"Under date of March 24, 1947, Schulte & Long, who were licensed as wholesale solicitors by the Supervisor of Liquor Control of the State of Missouri, made application for refund from the State of Missouri for Missouri excise inspection stamps or labels and, in support of their claim, submitted an affidavit stating they desired to have the Missouri stamps destroyed on a large amount of liquor which they were returning to their original supplier, namely, Philip Blum & Company of Chicago, Illinois.

"This claim went through the usual routine, and an agent of this department witnessed the destruction of these stamps, making proper affidavit thereto, and, in due course, the claim was presented to the Legislature of the State of Missouri for its consideration, along with a large number of similar claims, and the claim was included in House Bill No. 484, Section 9.210. This House Bill No. 484 was truly agreed to and finally passed, Section 9.210 appropriating in the sum of \$125,842.11 to purchase liquor and beer stamps to be refunded to the following named persons or companies to replace stamps not used and

cancelled, under the direction and under the supervision of the Supervisor of Liquor Control,' and included in the list was the item to Schulte & Long for \$5,760.00.

"On or about March 15, 1948, the Boatmen's National Bank of St. Louis, Missouri, wrote to Mr. Everette Rutledge, Chief Clerk of the Supervisor of Liquor Control, advising us that in connection with certain loan transactions between the Boatmen's National Bank of St. Louis and Schulte & Long, the aforementioned claim for refund of stamps had been assigned to said bank and requesting that a refund check be sent to the bank. The assignment referred to was dated October 23, 1947. (I have a photostatic copy of this assignment, which I will submit to you for examination upon request.)

"Under date of June 29, 1948, James J. Rank, Attorney at Law, 1062 Paul Brown Building, St. Louis, Missouri, advised me that Schulte & Long had executed to him an assignment for the benefit of creditors. This assignment was dated June 3, 1948. (I have a copy of this assignment, which I will submit to you upon your request.) My information is that this assignment for the benefit of creditors was not filed in the Circuit Court but was agreed to by all, or most, of the unsecured creditors.

"Both the Boatmen's National Bank and Mr. Rankin claim to be entitled to this refund. Will you please let me have your opinion as to whom I should turn over this refund, and further as to whether or not the refund can be paid in money or will have to be paid in stamps."

Under the facts stated in your letter above, you specifically inquire, "to whom should I turn over this refund." In order to arrive at a conclusion determinative of that question, it is first necessary for us to consider whether or not claims

against the Government for a refund are assignable. Should the law specifically declare that such a claim for refund, as presented here, is not assignable, it would seem apparent that your statutory duty would be to present the refund to Schulte & Long, Distributers, St. Louis, Missouri. The general rule is that appropriation acts must be strictly construed: See Meyer v. Kansas City, 18 S.W. (2d) 900, 323 Mo. 200; State v. Weatherby, 168 S.W. (2d) 1048, 350 Mo. 741. Should we conclude that a claim for refund against the Government is assignable, an entirely different situation will then present itself. Therefore, in our opinion, your request presents the initial question: whether or not a claim for refund, for which the Legislature of this state has appropriated money, can be assigned. The Appropriation Act, House Bill No. 484, passed April 19, 1948, signed by the Governor June 3, 1948, pages 14-15, Section 9.210, appropriates out of the state treasury, chargeable to the General Revenue Fund, the sum of \$5,760.00 to Schulte & Long, Distributers, St. Louis, Missouri, (H. B. 484, page 20, lines 197-198). According to your letter, Schulte & Long had made assignments of this claim to the Boatmen's National Bank of St. Louis, Missouri, under date of October 3, 1947, and to James J. Rank, Attorney at Law, St. Louis, Missouri, under date of June 3, 1948. Both parties are now claiming the entitlement to this particular refund claim, and the appropriation therefor, against the State of Missouri, as assignees of Schulte & Long.

The writer was unable to find in the State of Missouri any direct authority dealing with a situation like this. However, in 134 A.L.R. 1198, the assignment of a claim for a tax refund is annotated. Therein, at page 1202, it reads:

"The general rule, in the absence of language of the statute prohibiting it, is that claims against the government are assignable. * * * *"

Analyzing the case of State ex rel. Ben Stone v. Nudelman, 376 Ill. 535, 34 N.E. (2d) 851, the court established as a general rule that, in the absence of a statute forbidding it, claims against the Government, are, as a general rule, assignable. The court cited several cases, and in particular the case of Milnor v. Metz, 41 U.S. 221, 10 L. Ed. 943. In that case, Milnor had been employed by the United States as a gauger for the Port of Philadelphia, and having rendered unusually laborious duties, Milnor petitioned Congress in

January, 1838, for payment, for these duties performed, over and above his statutory salary. In May of 1840, Congress passed an act granting Milnor's request for payment. Prior to the passage of this relief act, Milnor took bankruptcy, and one Metz became the sole assignee of all of Milnor's claims. Metz then was the assignee prior to the passage by Congress of the appropriation act granting to Milnor the moneys petitioned for by reason of the discharge of his additional labors. After Metz became the assignee, Congress passed an act allowing this money to Milnor, and Metz applied to the Treasury Department claiming the amount of the sum allowed to Milnor by Congress. This application by Metz was rejected by the Treasury Department, and suit was instituted. Both the lower court and the appellate court entered a decree in favor of Metz as assignee of Milnor. That particular case, upholding the assignment of a claim against the Government by the claimant, even prior to the appropriation of the money necessary to pay the claim, is authority for the proposition that claims against the Government, in the absence of an express statute, are assignable even though said assignment is made prior to an appropriation for payment thereof.

In your request, we have the additional fact of a dispute existing between two claimants, both assignees, as to whom shall receive the refund. Under the facts of your letter, it would seem to be an impropriety for this office to attempt to determine the judicial validity of the disputed assignment in the present instance. Prior to 1943 Missouri relied upon the equitable procedure of a bill in interpleader to determine the rights of two or more persons severally claiming the same debt, duty or thing from the complainant under different titles or in different interests, and the complainant, claiming no title or interest for himself and not knowing to which of the claimants he should render the debt or duty or deliver the property, and the claimant being further in fear that he may suffer injury or be molested by an action unless the claimants are all brought into court and required to interplead their claims: See, *Baden Bank of St. Louis v. Trapp*, 180 S.W. (2d) 755. In laws of 1943, page 353, Section 18, now Section 847.18, Mo. R.S.A., the statute provides:

"Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that

the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counter-claim. The provisions of this section supplement and do not in any way limit the joinder of parties permitted in section 16 of this code."

This statute is taken from the Federal Rule 22(1), and has been construed not to destroy the remedy of interpleader as required in equity but merely to broaden its scope and is purely procedural. Moore v. McConkey, 203 S.W. (2d) 512.

CONCLUSION

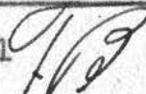
The present claim for a refund, under the facts of your letter quoted supra, would, therefore, seem to be assignable, and should, in our opinion, be disposed of by a bill in interpleader under the authority cited above.

Respectfully submitted,

WILLIAM C. BLAIR
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General



WCB:LR