

ANNEX C

Some Implications of Legal Tender
Status of U.S. Currency

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Questions have been raised as to the implications of the legal tender status of currency in the United States under existing law. This memorandum examines that issue in the context of (1) debts owed by one private party to another; (2) debts owed by a private party to the Federal government; and (3) Treasury's obligations to convert U.S. currency from one form to another.

A. Background

The Constitution grants to Congress power "To coin Money, regulate the Value thereof, and of foreign Coin."¹ In addition to this specific grant of authority, the Constitution grants Congress the power "to make all Laws which shall be necessary and proper for carrying into Execution" the enumerated powers.² These provisions, together with the powers to lay and collect taxes, to borrow money, and to regulate commerce, give Congress comprehensive authority over the currency and the monetary system of the United States.³ Only Congress, and not the States, may declare what shall be money and may regulate its value.⁴

Pursuant to this authority, Congress may take such measures as it deems necessary and proper to⁵ provide a uniform currency with an equal value in every state.⁶ Congress may define what constitutes legal tender,⁸ and may⁷ make certain things legal tender only for specific purposes. The exercise of these powers has been upheld on several occasions by the Supreme Court: Congress may issue paper money not redeemable in gold or silver⁸; may prohibit⁹ the mutilating, melting, or exporting of gold or silver¹⁰ coin; may prohibit clauses requiring payment in gold or silver¹⁰; and may, in exercising these powers, suspend the operation of provisions of contracts between private parties,¹¹ entered into either before or after the date of legislation. Thus, Congress has plenary powers to establish, regulate, and control the national currency; judicial review extends only to whether the measures taken have a reasonable relation to a constitutional purpose.¹²

B. Contracts Between Private Parties

Private parties may attempt to contract to receive payment for debts (1) in "dollars"; (2) in a particular form of U.S. currency; or (3) in foreign currency or some medium other than currency. This section considers whether offers of alternative payment will satisfy such obligations, and whether such obligations may be enforced.

31 USCA section 392 provides that "all coins and currencies of the United States.... shall be legal tender for all debts, public and private." If a contract does not specify the medium of payment required, the obligation may be fulfilled by tendering payment of the required sum in any "coin and currency of the United States." At least in one instance, where there was a legitimate business reason for doing so, a court has held that a creditor may restrict payment to certain forms of legal tender if prior notice is given. That court held that a railroad company could require passengers to pay fares in nickels, rather than pennies, where its fare machines accepted only nickels.¹³ On the other hand, a creditor need not accept payment in a medium other than legal tender.¹⁴ This outcome does not change if a contract specifies only that payment be made in "dollars"; a creditor may not subsequently require that payment be made in any particular coin or currency.¹⁵

A clause in a contract, requiring payment in a particular coin or currency, or in gold or silver, may be enforceable, but only if the underlying obligation was created on or after October 28, 1977. Congress determined in 1933 that such clauses were against public policy, and could be discharged by payment of an equivalent amount in legal tender.¹⁶ In 1977, however, Congress made this prohibition inapplicable to obligations issued on or after the effective date of P.L. 95-147.¹⁷

Private parties may voluntarily contract to make or receive payment in a medium of exchange other than United States legal tender.¹⁸ It appears that the cases which permit a creditor to demand payment in a specified form of legal tender would authorize a creditor to refuse payment in legal tender where a contract specifies some other form of payment.¹⁹ Such contracts are not necessarily enforceable, however; courts have discretion to require specific performance of the contract obligation, or to award payment of an equivalent amount in damages. Specific performance will be awarded only in extraordinary circumstances, where dollar damages are not an adequate substitute for the promised performance.²⁰ Further, where damages are awarded, they must be denominated in dollars.²¹

C. Obligations of Private Parties to the U.S. Government

The U.S. Government is not required by statute to demand that all obligations owed to it be paid with legal tender. Therefore, the U.S. Government may enter into contracts which provide that payment be made in foreign currency, gold or silver, or some other medium of exchange which is not legal tender. Where a contract does not provide how payment must be made, or provides that payment be made in dollars, any form of legal tender must be accepted. This is because, as noted above, 31 USCA section 392 provides that coins and currencies of the United States "shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues."

Where a contract provides that payment be made in something other than dollars, however, section 392 does not require that the U.S. Government accept only legal tender. Section 392 applies to only those debts which may be paid in legal tender; it requires only that where the U.S. Government does not specify otherwise, payment in any U.S. coin or currency will satisfy the debt. In addition, this section has been held to authorize the U.S. Government to refuse²² to accept payment of taxes in a medium other than legal tender. Thus, for the purposes of 31 USCA section 392, the U.S. Government has the same status as a private party.

31 USCA section 371 provides that the money of account of the United States shall be expressed in dollars and decimal portions thereof, and also provides generally that "all accounts in the public offices and all proceedings in the courts shall be kept and had in conformity to this regulation." Accordingly, judgments in United States²³ courts, for the payment of damages, must be stated in dollars. In addition, it requires that the²⁴ IRS maintain records and measure transactions in dollar terms. However, there are no cases addressing the question whether this section limits in any way the authority of the Executive Branch to enter into obligations not denominated in dollars. In any event, the U.S. Government in many instances has been authorized by statute to enter into such contracts (e.g., the Commodity Credit Corporation may agree to barter agricultural commodities for other specified commodities; the United States Treasury may borrow foreign currencies and purchase and sell foreign exchange).²⁵ The U.S. Government, however, would be situated similarly to a private litigant seeking to enforce such an agreement in court.

D. Conversion of Various Forms of United States Currency by Treasury

Treasury has a very limited obligation under existing law to convert coins and currencies of the United States when requested to do so by lawful holders thereof. That obligation is set forth in 31 USCA section 773a:

The lawful holders of the coins or currencies of the United States shall be entitled to exchange them, dollar for dollar, for other coins or currencies which may be lawfully acquired and are legal tender for public and private debts. The Secretary of the Treasury is authorized and directed to make such exchanges and payments upon presentation hereunder in the manner provided in regulations prescribed by him.

Neither this nor any other provision of law requires Treasury to redeem any particular currency or coin for any other. Further, any exchanges under section 773a must be made on a dollar for dollar basis, rather on the basis of the bullion value or the numismatic value of coins or currency received.

NOTES

- 1 Article 1, Section 8, Clause 5.
- 2 Article 1, Section 8, Clause 18.
- 3 Norman v. Baltimore & Ohio Railway Co., 294 US 240 (1935),
citing Juilliard v. Greenman, 110 US 421, 440 (1884).
- 4 Article 1, Section 10.
- 5 Knox v. Lee, 12 Wall. 457 (1871).
- 6 Juilliard v. Greenman, supra.
- 7 See, e.g., 31 USCA section 452, which originally made
United States notes legal tender except for import duties
and interest on the public debt.
- 8 Juilliard v. Greenman, supra.
- 9 Ling Su Fan, 218 US 302 (1910).
- 10 Guaranty Trust v. Henwood, 307 US 247 (1939); Norman v.
Baltimore, supra.
- 11 Id. Such action does not constitute a taking without
compensation in violation of due process, nor does it
constitute an impermissible impairment of contract
rights.
- 12 Norman v. Baltimore, at 211.
- 13 Martin v. Rhode Island Co., 78 A. 548 (R.I. 1911).
- 14 Calafut v. CIR, 277 F. Supp. 266 (D.C.Pa. 1967).
- 15 Juilliard v. Greenman, supra.
- 16 Joint Resolution of the Congress of June 5, 1933 (31 USCA
section 463).
- 17 P.L. 95-147, section 4(c), October 28, 1977
(91 Stat. 1229).
- 18 Consolidated Freightways v. Industrial Commission,
264 NE2d 291, 293 (Ill. 1971).

- 19 Bronson v. Rodes, 74 US 229 (1868).
- 20 First National State Bank of New Jersey v. Commonwealth Federal Savings and Loan Assn. of Norristown, Pa., 455 F. Supp 464 (D.N.J. 1978); aff'd 610 F.2d 164 (3d Cir. 1980).
- 21 31 U.S.C.A. section 371. See also International Silk Guild v. Rogers, 262 F.2d 219 (D.C. Cir. 1958).
- 22 Calafut v. CIR, supra.
- 23 54 Am Jur2d Money, Sec. 31. See also Deutsche Bank Filiale Nurnberg v. Humphrey, 272 U.S. 517 (1926).
- 24 Durovic v. CIR, 1975, 65 TC 480.
- 25 7 USCA section 1692; 31 U.S.C.A. sections 766 and 822a.

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