

PUBLIC CIRCULAR NO. 31

UNDER EXECUTIVE ORDER NO. 8389, AS AMENDED, EXECUTIVE ORDER NO. 9193, AS AMENDED, SECTIONS 3(a) AND 5(b) OF THE TRADING WITH THE ENEMY ACT, AS AMENDED BY THE FIRST WAR POWERS ACT, 1941, RELATING TO FOREIGN FUNDS CONTROL.*

ATTACHMENTS AGAINST BLOCKED PROPERTY

(1) Reference is made to General Ruling No. 12 relating to unlicensed transfers of blocked property. Reference is also made to General Ruling No. 19 relating to the release of Treasury controls over property vested by the Alien Property Custodian. This circular deals with the effect of such release on unlicensed attachments levied with respect to blocked property prior to the vesting thereof by the Custodian.

(2) Under paragraph (1) of General Ruling No. 12, interests in blocked property cannot be acquired, transferred, or created by unlicensed "transfers". Nor may an unlicensed transfer be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any blocked property.

(3) An attachment is a "transfer". See paragraph (5) of General Ruling No. 12 where the term "transfer" is defined as including "the issuance, docketing, filing, or other levy of or under any judgment, decree, attachment, execution, or other judicial or administrative process or order, or the service of any garnishment". An unlicensed attachment, therefore, cannot operate to transfer or create any interest in blocked property. Nor can it serve as a basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any blocked property.

(4) Paragraph (4) of General Ruling No. 12 does not constitute a license authorizing the seizure or creation of any interest in blocked property by attachment proceedings or other legal process.

* Appendix B; - Sec. 3(a), 40 Stat. 412; Sec. 5(b), 40 Stat. 415 and 966; Sec. 2, 48 Stat. 1; 54 Stat. 179; 55 Stat. 838; Ex. Order 8389, April 10, 1940, as amended by Ex. Order 8785, June 14, 1941, Ex. Order 8832, July 26, 1941, Ex. Order 8963, Dec. 9, 1941, and Ex. Order 8998, Dec. 26, 1941; Ex. Order 9193, July 6, 1942, as amended by Ex. Order 9567, June 8, 1945; Regulations, April 10, 1940, as amended June 14, 1941, July 26, 1941, and February 19, 1946.

This paragraph merely is a formal statement of the position which the Treasury Department has always taken with respect to litigation affecting blocked property -- that it does not desire to interfere with such litigation so long as it is clearly understood that the judicial process cannot, without a license or other authorization from the Secretary of the Treasury, operate to transfer or create any interest in blocked property. Thus the proviso of paragraph (4) specifies that "no attachment, judgment, decree, lien, execution, garnishment, or other judicial process shall confer or create a greater right, power, or privilege with respect to, or interest in, any property in a blocked account than the owner of such property could create or confer by voluntary act prior to the issuance of an appropriate license." In issuing paragraph (4), the Treasury Department did not undertake to decide for the courts whether they should exercise jurisdiction. It simply prescribed that jurisdiction could be exercised only on the basis that if a Treasury license was not issued, the judicial process could not operate to transfer or create any interest in blocked property, nor could it be the basis for the assertion or recognition of any other right, remedy, power, or privilege with respect to the property.

(5) The Treasury Department has always considered that when the Alien Property Custodian has vested any property, it would not be in the national interest for the Treasury Department thereafter to grant licenses authorizing the creation or acquisition of any interest in the property. Formerly it was the practice of the Department, whenever it was notified by the Custodian that a particular property had been vested, to issue a specific release to the Custodian of all control of the property under Executive Orders Nos. 8389 and 9193. Paragraph (1) of General Ruling No. 19 constitutes a general release of such control in the case of all German and Japanese property vested by the Custodian. Paragraph (2) of the General Ruling is intended to make it clear that a release of control over any vested property to the Alien Property Custodian, whether by specific release or by reason of the General Ruling, operates as a final denial by the Secretary of the Treasury of any pending application for license or other authorization relating to such property and that no application for a license authorizing the creation, acquisition, or transfer of any interest in such property will thereafter be entertained or granted. The paragraph is thus a formal statement of what has always been the position of the Treasury Department -- namely, that once blocked property has been vested by the Custodian, there is no longer any possibility that an unlicensed attachment may ripen through the issuance of a Treasury license into a seizure and acquisition of an interest in such blocked property.

(6) In view of the fact that the Alien Property Custodian has publicly announced his intention of vesting all German and Japanese property in the United States, it will be the general policy of the Treasury Department not to grant any licenses authorizing the creation or acquisition through legal process of any interest in blocked German or Japanese property.

JOSEPH J. O'CONNELL, JR.
Acting Secretary of the Treasury