Kirkpatrick

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

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FILE: B-216542 **DATE:** June 11, 1985

MATTER OF: Jack G. Petrie

DIGEST:

An employee is limited to the lower house-selling expenses and household goods transportation permitted on the effective date of his transfer, prior to the increases authorized by section 118 of Public Law 98-151, November 14, 1983. The effective date of his transfer was the date he reported for duty at his new official station, August 2, 1982, but the amended Federal Travel Regulations restrict reimbursement of the increases under Public Law 98-151 to employees reporting on or after November 14, 1983. Contrary statements made by congressional sponsors after enactment are not sufficient to show that the regulation promulgated by the responsible agency is improper where it is not arbitrary or capricious nor clearly contrary to the statutory purpose. Also, earlier amendments of the regulations authorized greater house-selling expense increases but they did not apply to this employee because they were limited to employees reporting at their new official stations on or after October 1, 1982.

In this decision it is determined that reimbursement of the relocation expenses of Mr. Jack G. Petrie, an employee of the Internal Revenue Service, is limited to the amounts authorized by law and regulation in effect when he reported for duty at his new official station.[1/]

1/ B. Mathews, Authorized Certifying Officer, Internal Revenue Service, Central Region, requested this decision.

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Background

Mr. Petrie's permanent duty station was changed from Nashville, Tennessee, to Cleveland, Ohio, where he reported for duty on August 2, 1982. Effective November 14, 1983, statutory amendments authorized increased relocation benefits. The increases were provided by amendments made to 5 U.S.C. Chapter 57 by section 118 of the Joint Resolution of November 14, 1983, Public Law 98-151, 97 Stat. 977-979.

Mr. Petrie indicates that he sold his home near Nashville on March 23, 1984, and shipped his household goods the same day. He says he incurred costs of $9,777.79 for the sale, and he shipped 15,790 pounds of household goods. The Internal Revenue Service limited Mr. Petrie's reimbursement for the sale of his residence to $8,000, and charged him for the cost of shipping the amount of his household goods which exceeded 11,000 pounds because these were the maximums allowable under the statutes and regulations in effect on the effective date of his transfer. 5 U.S.C. §§ 5724(a) and 5724a(a) (1982), implemented by Federal Travel Regulations, paras. 2-6.2g and 2-8.2a (Supp. 1, effective Nov. 1, 1981), incorp. by ref., 41 C.F.R. § 101-7.003. The regulations define the effective date of transfer as the date the employee reports for duty at his/her new duty station. FTR, para. 2-1.4j. See also James E. Wallace, 61 Comp. Gen. 164 (1981). The $8,000 maximum reimbursement for residence sale expenses was later raised by amendment to the regulations to the lesser of $15,000 or 10 percent of the sale price. FTR, para. 2-6.2g (Supp. 4, effective October 1, 1982). However, that increase did not apply to Mr. Petrie because it was made applicable only to those employees whose effective dates of transfer were on or after October 1, 1982, and Mr. Petrie's effective date of transfer (the date he reported to his new duty station) was August 2, 1982.

Mr. Petrie argues that his claim should now be allowed on the basis that what he claims is within the maximums authorized by section 118 of the Joint Resolution of November 14, 1983. Section 118 amended 5 U.S.C. § 5724a(a) by adding subsection (a)(4)(B)(i) to permit reimbursement of the lesser of $10,000 selling expenses or 15 percent of the sales price and amended 5 U.S.C. § 5724(a) to allow transportation of up to 18,000 pounds of household goods.

Mr. Petrie claims full reimbursement of the items under the increased maximums, since the costs were incurred after enactment of the statutory amendments. The employing agency, however, limited reimbursement to the maximums allowable before the increases because it considers that the amendments apply only if the employee's transfer occurred on or after the enactment date, that is, November 14, 1983.

Analysis

Neither section 118 nor any other provision of the Joint Resolution specified the date of a transaction or event involving relocation, such as incurring house-selling expenses or reporting at the new duty station, to be the effective date of the increases. Instead, subsection 118(c) of the Joint Resolution merely stated that the amendments would be effective on the date of enactment. Subsection 118(c) further provided that not later than 30 days after enactment the President should prescribe the implementing regulations to take effect on the date of enactment, November 14, 1983. In addition, subsection 118(b) provided that the amendments should be carried out by the use of funds appropriated or otherwise available for administrative expenses, and that the amendments did not authorize the appropriation of funds exceeding the sums already authorized.

Both 5 U.S.C. § 5724(a) and 5724a(a) state that the relocation benefits they authorize are to be provided "[u]nder such regulations as the President may prescribe." The General Services Administration, which has been delegated the authority to issue the implementing regulations, did so on March 13, 1984, and made them retroactive to November 14, 1983, as prescribed by subsection 118(c) of the Joint Resolution. Concerning the effective date of the increases in relation to the employee's relocation, the new regulations stated:

> "Because of successive changes to the provisions of these regulations governing relocation allowances and the extended period of time that employees retain eligibility for certain allowances * * * the reimbursement maximums or limitations * * * will not be the same for all employees even though claims may

> be filed within the same timeframe. The provisions of these regulations in effect on the employee's or new appointee's effective date of transfer or appointment (see 2-1.4j) shall be used for payment or reimbursement purposes." (Emphasis added.)

See the additions to the Federal Travel Regulations, paragraph 2-1.3d and Appendix 2-A (Supp. 10, March 13, 1984), incorp. by ref., 41 C.F.R. § 101-7.003 (1984). The Federal Travel Regulations, paragraph 2-1.4j, referred to in the above quotation, defines "effective date of transfer or appointment" to mean:

> "The date on which an employee or new appointee reports for duty at his/her new or first official station."

In view of the above, the allowances payable or reimbursable are those under the FTR provisions in effect when the transferred employee reports for duty at the new official duty station. Consequently, the FTR amendments provide that entitlement to the relocation increases effective November 14, 1983, under the Joint Resolution requires the employee to have reported at the new official station on or after that date.2/

The only remaining question is whether the FTR reporting date requirement complies with the congressional intent to make the increases under section 118 of the Joint Resolution effective November 14, 1983. Absent language of the statute or legislative history clearly indicating a different outcome, a regulation of the agency responsible for implementing the statute generally is considered to be consistent with congressional intent. See Colonel William N. Jackomis, 58 Comp. Gen. 635, 638 (1979), and the court cases it cites.

Mr. Petrie suggests legislative history pointing to an outcome different from that contained in the FTR amendments. He refers to a letter of January 26, 1984, from two

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2/ See also paragraph 2 of the Acting Administrator of General Services' memorandum to Heads of Federal Agencies transmitting the March 10, 1984 amendments to the FTR.

of the congressional sponsors of section 118 to the Administrator of the General Services Administration. The letter relates the sponsors' belief that the increases in section 118 of the Joint Resolution cover employees who on or after November 14, 1983, are undergoing a relocation or are "continuing to incur costs associated with a government directed move." We interpret this statement to mean that the sponsors believed that section 118 was clear on the point and that the General Services Administration should have adopted this view. The statement does not refer to any formal legislative history showing congressional intent. In fact, the letter points out that there were no committee hearings or reports on the legislation. Ordinarily those are the key portions of the legislative history for interpreting a statute. Significantly, the sponsors' statement concerning the effective date was made over 10 weeks after the enactment of the Joint Resolution. Sponsors' remarks in the formal legislative history and debate prior to enactment may be important interpretive aids because the legislative body considered them before passing the measure. On the other hand, postpassage remarks by sponsors carry less weight and do not serve to change the legislative intent. See Epstein v. Resor, 296 F. Supp. 214, 216 (N.D. Cal. 1969), aff'd, 421 F.2d 930 (9th Cir.), cert. denied, 398 U.S. 965 (1970); Ambook Enterprises v. Time Inc., 612 F.2d 604, 610 (2d Cir. 1979); 2A SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION, § 48.15 (4th ed. 1973).

In the present case, Congress granted the General Services Administration the authority to designate the transaction or event that must occur on or after the effective date of section 118 in order to qualify an employee for the relocation increases. Although the sponsors requested the General Services Administration to choose a different event, it selected the employee's entrance on duty at the new official station. This appears to have been a practical solution to establishing the effective date and is generally consistent with previous changes made in the regulations governing these entitlements. We do not find it to be arbitrary or contrary to the statutory purpose. In addition some restriction on application of the new provisions to those whose transfers were authorized prior to the enactment of the statute seems consistent with the provisions of subsection 118(b) stating that the amendments do not provide authorization for any additional appropriation of funds to carry out the new provisions.

Since Mr. Petrie reported for duty at Cleveland prior to the effective date of the Joint Resolution and the implementing regulations, he is not entitled to the relocation expense increases he claims.

Milton J. Socolar

for Comptroller General
of the United States