



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Internal Revenue Service - Retroactive Travel Allowance

File: B-230392

Date: September 1, 1988

DIGEST

The Internal Revenue Service seeks to make a retroactive payment to employees for meals and incidental expenses incurred on first and last days of travel during the period from July 1, 1986, to August 1, 1987, when the Federal Travel Regulations required that such expenses be computed on a half-day rather than a quarter-day basis. The regulations were changed to require a quarter-day computation effective August 1, 1987. Inasmuch as the half-day regulation in effect during the period in question had the force and effect of law, and the employees' rights and liabilities with regard to per diem and travel allowances vested at the time travel was performed, the half-day regulation may not be waived or modified by an employing agency or this Office. Accordingly, there is no authority to retroactively apply the quarter-day computation.

DECISION

ISSUE

This is in response to a request from the Acting Assistant Secretary of the Treasury (Management) for an advance decision on whether the Internal Revenue Service (IRS) may make a retroactive payment to non-bargaining unit IRS employees. The payment would be for meals and incidental expenses incurred on the first and last days of travel during the period from July 1, 1986, to August 1, 1987, and the payment would reflect a retroactive application of a change in the travel regulations from computing such expenses on a half-day to a quarter-day basis. For the reasons stated below, we hold that IRS has no authority to compensate its employees by applying the amended regulation retroactively.

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BACKGROUND

Effective July 1, 1986, the General Services Administration (GSA) revised the government-wide regulation for computation of reimbursement for meals and incidental expenses for the first and last days of travel from quarter-days based on time to half-days without regard to time. Federal Travel Regulations, para. 1-7.5b(2)(a) and (c) (Supp. 20, May 30, 1986), incorp. by ref., 41 C.F.R. § 101-7.003 (1987). Thus, on the day of departure, the employee would be reimbursed for one-half of the meals and incidental expenses allowance plus lodgings, if required, and on the day of return the employee would again be entitled to one-half of the meals and incidental expense allowance. These payments would be made without regard to what time of day the employee left on temporary duty or what time of day the employee returned from temporary duty.

The IRS implemented the regulation for all employees, although the IRS notes that later it was determined that doing so for bargaining unit employees was contrary to a provision in the negotiated labor-management agreement which specified quarter-days.

In response to concerns about equity and administrative efficiency, GSA amended the regulation to convert back to a quarter-day method of calculating the meals and incidental expenses allowance for partial days of travel. Thus, under the quarter-day system, the first and last days of travel are divided into quarters and the employee is reimbursed a portion of the meals and incidental expense allowance based upon what time of day the employee departs on temporary duty and what time of day the employee returns from temporary duty. This change was made effective for travel performed on or after August 1, 1987. FTR, para. 1-7.5b(2)(a) and (c) (Supp. 24, July 15, 1987).

The IRS notes that a national grievance was filed on behalf of IRS bargaining unit employees because of the contract language prohibiting the elimination of the quarter-day computation. The subsequent settlement of the grievance provided for payment of the difference between the half-day amounts actually paid during the period the half-day regulation was in effect, and the amounts which would have accrued if a quarter-day computation was used.

In an effort to treat all employees equally, the IRS now wishes to compensate non-bargaining unit employees by retroactively applying the quarter-day computation to travel performed during the period when the half-day computation was in effect.

OPINION

The controlling statutory provisions regarding reimbursement for travel and subsistence expenses of civilian employees are contained in sections 5701-5709 of title 5, United States Code (1982). Regulations implementing these provisions are issued by GSA and are found at Chapter 1, Travel Allowances, of the FTR. As a statutorily authorized regulation, the provisions of the FTR have the force and effect of law and may not be waived or modified by an employing agency or our Office regardless of the existence of any extenuating circumstances. Dominic D. D'Abate, 63 Comp. Gen. 2 (1983); Charles W. Miller, 60 Comp. Gen. 295 (1981).

It is also well established that legal rights and liabilities in regard to per diem and other travel allowances vest when the travel is performed under competent orders. There is no authority to cancel or modify such orders retroactively to increase or decrease the rights which have become fixed under the applicable statutes and regulations in effect at that time. Warrant Officer John W. Snapp, USMC, 63 Comp. Gen. 4 (1983), and cases cited.

In this case, the non-bargaining unit IRS employees' rights vested when they traveled between July 1, 1986, and August 1, 1987, and the half-day computation published in the FTR covering that time period applies. There is no authority to retroactively apply the quarter-day computation which became effective on August 1, 1987.

We note that, with regard to the settlement of the grievance filed by the bargaining unit employees, we have no authority to review or object to a grievance settlement under 5 U.S.C. §§ 7121 and 7122. See 4 C.F.R. §§ 22.7 and 22.8.

Accordingly, the IRS may not compensate its non-bargaining unit employees for the difference between amounts for meals and incidental expenses computed under the half-day and quarter-day methods for the period when the half-day regulation was in effect.

for 
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