



Comptroller General  
of the United States  
Washington, D.C. 20548

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## Decision

**Matter of:** Robert W. Gambino - Reemployed Annuitant -  
Civil Service Retirement System - Offset  
Contributions

**File:** B-246074

**Date:** July 27, 1992

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### DIGEST

Authorized certifying officer asks whether full deductions for both Civil Service Retirement System (CSRS) and Social Security contributions must be made when computing the pay of a reemployed annuitant who is a CSRS-Offset employee. The requirement under certain circumstances to deduct full CSRS-Offset contributions at the same time as Social Security's Old Age, Survivor, and Disability Insurance contributions are being withheld, is a reasonable interpretation by the Office of Personnel Management (OPM) of the governing statutory provisions and effectively carries out the intent of the law.

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### DECISION

An authorized certifying officer<sup>1</sup> of the Department of the Interior's consolidated payroll office has requested a decision on the correct methodology to be used for withholding Civil Service Retirement System (CSRS) contributions from the salary of a reemployed annuitant. The certifying officer contends that instructions from the Office of Personnel Management (OPM) regarding the method of withholding follow the "letter of the law," and not "the intent of the law," and work to the disadvantage of the employee. For the reasons that follow, we agree with OPM's determination.

Mr. Robert W. Gambino retired from the Central Intelligence Agency (CIA) and is receiving an annuity for that service under the CIA Retirement and Disability System. 50 U.S.C. § 403 note (1988). Mr. Gambino was subsequently appointed by the President to the position of Director of the Selective Service System. As a reemployed annuitant, Mr. Gambino's salary is subject to the deduction of a sum

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<sup>1</sup>Thomas G. Gall, Denver, Colorado (Reference: D-2610).

equal to the annuity allocable to the period of actual employment. 50 U.S.C. § 403 (1988), note § 273(a).

Due to the nature of his appointment, and based on his prior employment with the CIA, Mr. Gambino is considered to be a Civil Service Retirement System (CSRS) employee who is also subject to Social Security's Old Age, Survivor, and Disability Insurance (OASDI) contributions. Thus, he is a "CSRS-Offset" employee. A CSRS-Offset employee pays 0.8 percent into the CSRS and 6.2 percent into OASDI until the OASDI contribution and benefit base for the year is reached. In 1991 this base amount was \$53,400. When a CSRS-Offset employee reaches the \$53,400 base amount, the 6.2 percent OASDI deduction then stops and he or she then pays a full 7 percent into CSRS. This presents no problem for the employee who is not receiving an annuity since both deductions are calculated on the same base amount and a combined CSRS-Offset and OASDI deduction rate of 7 percent is maintained for the entire calendar year.

However, the calculation is different for a reemployed annuitant. For CSRS contribution purposes, the base amount for a reemployed annuitant is calculated on basic pay (i.e., salary before annuity deduction).<sup>2</sup> In contrast, the base amount for OASDI contributions is calculated on "wages", defined as "all remuneration for employment," but not including any annuity payments.<sup>3</sup>

Since Mr. Gambino is a reemployed annuitant, his annuity is deducted from his base salary (\$108,300 in 1991). Therefore, in 1991 Mr. Gambino reached the base amount of \$53,400 in basic pay for purposes of CSRS deductions before he reached it in wages actually received for purposes of OASDI deductions. This resulted in both OASDI and full CSRS deductions being withheld from Mr. Gambino's pay from the point his basic pay reached \$53,400 until his total OASDI wages reached that amount.

The certifying officer has been using the prescribed methodology outlined above in deducting contributions from Mr. Gambino's salary to OASDI and CSRS, but contends that it is not consistent with the intent of the law and works to the disadvantage of the employee because he must pay the additional 6.2 percent CSRS while he is still subject to the 6.2 percent OASDI tax on his net pay. The certifying officer therefore recommends that the additional 6.2 percent CSRS not be applied to base salary until the maximum OASDI tax for the year has been withheld.

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<sup>2</sup>5 U.S.C. § 8334(a)(1) (1988).

<sup>3</sup>26 U.S.C. § 3121(a) and (a)(5) (1988).

Since OPM has jurisdiction over civil service retirement claims under the provisions of 5 U.S.C. § 8347 (1988), we requested its comments on this matter. The Assistant Director for Retirement and Insurance Policy, OPM, responded to our request and advised that the prescribed method of withholding from Mr. Gambino's salary is consistent with the statutory authority providing for such offset, and that the deduction rules do not work to the disadvantage of Mr. Gambino and other individuals similarly situated. The Assistant Director states that the contribution and benefit base of \$53,400 is reached in basic pay before it is reached in OASDI wages and full 7 percent CSRS deductions begin before OASDI deductions cease. This results in the two deductions totaling less than 7 percent of basic pay until the contribution and benefit base is reached in basic pay and then totaling over 7 percent of basic pay until total OASDI wages reach the contribution and benefit base.

The Assistant Director therefore concludes that Mr. Gambino will not pay any more or less in CSRS-Offset deductions than any other employee with the same basic pay for the year. Moreover, he says that Mr. Gambino's future annuity will be recomputed based on the full rate of basic pay for his additional service, and he will receive the same credit for service as any other employee with the same basic pay. See 5 U.S.C. § 8344 (1988).

OPM, as the agency charged with implementing the civil service retirement system, is entitled to be given deference as to its interpretation of the law, unless its interpretation can be shown to be clearly wrong. 66 Comp. Gen. 393, 398 (1987); Beneficial Corporation and Subsidiaries v. United States, 814 F.2d 1570 (Fed. Cir. 1987); Rust Communications Group v. United States, 20 Cl. Ct. 392 (1990); Chevron U.S.A., Inc. v. United States, 17 Cl. Ct. 537 (1989).

Although the certifying officer suggests that Mr. Gambino is being penalized by OPM's interpretation, any other interpretation would result in disparate treatment between CSRS-Offset employees who are reemployed annuitants and those who are not. As pointed out by OPM, Mr. Gambino actually suffers no adverse effect despite the fluctuation in deductions because at the end of the year his total CSRS and OASDI deductions will be exactly the same as a CSRS-Offset employee with the same basic pay who does not have an annuity deduction.

Therefore, we believe OPM's interpretation of the governing statutory provisions is reasonable and effectively carries out the intent of the law. Mr. Gambino's salary deductions

for OASDI tax and CSRS fund contributions should continue to be calculated in accordance with OPM's instructions.

*for*   
Comptroller General  
of the United States