



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

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Mr. Raymond A. Fontaine
Comptroller
General Services Administration
Washington, D.C. 20405

Dear Mr. Fontaine:

This letter is in response to your request for an independent review of the leave repurchase accounting made in the case of Mr. . Much of the background information set forth below was obtained informally from Mr. , Chief, GSA National Payroll Center, Kansas City, Missouri.

Mr. , a GSA employee, suffered a job-related injury on April 1, 1985. He applied for workers' compensation through the Office of Workers' Compensation Programs (OWCP), Department of Labor, under the provisions of the Federal Employees' Compensation Act, 5 U.S.C. §§ 8101-8193 (1982). Pending receipt of that award, Mr. began a period of sick leave on May 17, 1985, which continued until June 21, 1985. Effective June 22, 1985, he entered into leave without pay (LWOP) status.

On August 28, 1985, Mr. was granted a workers' compensation award by OWCP for the period May 17, 1985, to June 21, 1985. Since an employee may not receive OWCP compensation for any period in which he is carried in a pay status, Mr. had to "buy back" the sick leave taken in connection with the job-related injury and be placed in a leave-without-pay (LWOP) status during that period. 5 U.S.C. § 8116 (1982); 20 C.F.R. § 10.310 (1985).

The leave to be repurchased by Mr. had a value of \$2,059.20. The OWCP award was \$1,544.40, and it was paid directly to GSA by OWCP in 1985, leaving a balance due GSA from Mr. of \$514.80. Recovery of that amount was not accomplished until 1986, after Mr. had retired.

He has complained that GSA has collected this indebtedness twice; once from his withholdings and once from his actual

lump-sum leave payment. It appears that Mr. confusion over a "double deduction" of the debt was the result of an error in the April 10, 1987, letter from GSA which implied that the debt had been collected from his lump-sum leave payment. Since that issue has been clarified by GSA, we need not respond to it further.

Ordinarily, debts of an employee to his agency are recovered by direct payment by the employee, by deductions from current pay, by lump-sum leave payment at separation, or, if the employee is retired, by deduction from his monthly retirement annuity. However, in this case, GSA did not follow that practice. Instead, based on Mr. gross pay for 1986 (lump-sum leave payment of \$3,326.40), GSA calculated the amount to be withheld for federal and state taxes, and medicare. GSA then subtracted or "backed off" from each of these withholding items sufficient money to eliminate Mr. debt, \$514.80, and returned this amount to GSA appropriations. GSA then reported to the federal and state taxing authorities on Mr. W-2 forms for 1986 that he received \$514.80 less income that year than his actual income from GSA. In addition, GSA advised Mr. that since adjustments were made for calendar year 1986, he could claim as a miscellaneous deduction on his federal and state tax returns for 1986 the income received in 1985, but limited to the amount of the OWCP award - \$1,544.80. See Internal Revenue Service Rev. Rul. 79-322.

We know of no basis upon which GSA could properly adjust Mr. required deductions from his lump-sum annual leave payment in order to recover the indebtedness. While it would be proper to recover the money due from a lump-sum leave payment, it should have been from the net pay due him, not from monies required to be withheld for taxes and medicare for 1986. Failing that, GSA should have attempted collection by offset against his retirement annuity or by civil action. It was improper to adjust the debt by reducing his required withholding amounts and reporting a lesser amount of income to the taxing authorities for 1986.

As we understand it, Mr. has now received corrected W-2's for 1985 and 1986. As corrected, his 1986 W-2 statement properly reflects wages of \$3,326.40, and, in accordance with the IRS Ruling cited above, he may now claim the full \$2,059.20 OWCP payment as a miscellaneous deduction on an amended return for calendar year 1986. However, it

appears that the corrected W-2 for 1985 would have to be further corrected because it underreported his wages for that calendar year.

Sincerely yours,



Robert L. Higgins
Associate General Counsel

cc:

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