The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: A. J. Mitchell, Jr. - Relocation Income Tax Allowance

File: B-224928

Date: May 22, 1987

DIGEST

An employee entitled to relocation expenses because he was transferred and required to occupy government housing at a site 26 miles from his previous duty station was not entitled to deduct any of the moving expenses from his income tax because the move was less than 35 miles. Employee may be paid a relocation income tax allowance based upon the entire amount of the reimbursed expenses since none of his expenses were deductible in the particular circumstances of this case.

DECISION

This action is in response to a request from the U.S. Department of the Interior regarding a claim for a relocation income tax (RIT) allowance in connection with the transfer of an employee. The issue presented is whether the agency may allow a claim for a RIT allowance based upon the entire amount of the reimbursed moving expenses, since none of the reimbursed expenses were tax deductible. It is our view that the payment may be made by the agency.

Mr. A. J. Mitchell, Jr., an employee of the Bureau of Reclamation, Department of the Interior, was transferred from Boise, Idaho, to Arrowrock Field Station, Idaho, effective August 8, 1985. Arrowrock Field Station is the site of a dam and reservation located on the Boise River, approximately 26 miles from the city of Boise. Mr. Mitchell's new position requires that he reside in government housing at the dam site. Thus, Mr. Mitchell was authorized relocation expenses, including a RIT allowance.

Normally employees eligible for a RIT allowance can deduct some moving expenses from their Federal, state or local income taxes, and no RIT allowance may be paid for deductible items. However, Mr. Mitchell's move did not meet the

Internal Revenue Code's 35-mile distance requirement and thus he was unable to deduct any of his moving expenses. Since the entire amount of moving expenses reimbursed to Mr. Mitchell is taxable, the agency asks if they may pay a RIT allowance based upon the entire amount of his reimbursed expenses, and whether the withholding tax allowance, the estimated partial payment of his RIT allowance which has already been paid, was proper.

Statutory authority for payment of a RIT allowance was established by Public Law No. 98-151, November 14, 1983, as amended by Public Law No. 98-473, October 12, 1984, now codified at 5 U.S.C. § 5724b (Supp. III, 1985). Applicable regulations promulgated pursuant to that authority are found in the Federal Travel Regulations (FTR), GSA Bulletin FPMR A-40, Supp. 14 (effective November 14, 1983), 50 Fed. Reg. 15702-15710 (April 19, 1985) and 50 Fed. Reg. 19247 (May 7, 1985); as amended by Supp. 17 (effective November 14, 1983), 51 Fed. Reg. 9528-9530 (March 19, 1986).

Paragraph 2-11.1 of the FTR provides authorization for reimbursement to eligible employees for substantially all of the additional Federal, state and local income taxes incurred by an employee as a result of reimbursements received for travel and transportation expenses and relocation allowances. Paragraph 2-11.3 lists the types of moving expenses covered by the RIT allowance but provides that expenses are covered only to the extent that they are not allowable as a moving expense deduction for tax purposes. Paragraph 2-11.4f precludes payment of a RIT allowance for reimbursed moving expenses when the employee decides not to claim a deduction for an item for which a deduction is allowable.

Although FTR para. 2-11.4f prohibits payment of a RIT allowance for any tax liability resulting from an employee's decision not to deduct moving expenses for which a tax deduction is allowable under the Internal Revenue Code, or appropriate state or local tax codes, there is nothing in the regulations or legislative history of section 5724b which indicates that payment of the allowance may not be made when the employee is required to move and none of the moving expenses qualify for deduction from the employee's income tax. On the contrary, it seems that this type of circumstance, in which an employee is required to move for the benefit of the government and will incur additional tax liability because of the move, comes within the purpose for which the law was enacted.

Thus, the legislative history of Public Law No. 98-151 shows that Congress was aware that Federal employees were being forced to pay higher taxes due to amounts they received

for moving expenses. Congress also recognized that only a small portion of these expenses was deductible, and the intent of this provision was to allow the government to pay the employee for the increase in taxes. In this regard, we note that while originally section 5724b provided authority to pay "all or part" of the additional tax, section 5724b was amended by Public Law No. 98-473, to provide authority to pay "substantially all" of the additional tax. Thus it appears clear that Congress intended employees to be compensated for all of the taxes incurred, subject to the rules and regulations set out in the law.

In view of the above, it is our conclusion that nothing in the law or implementing regulations prevents the agency from paying Mr. Mitchell a RIT allowance based upon the full amount of his reimbursed expenses. The withholding tax allowance already paid may be retained and should be offset from the total RIT allowance, as provided by the regulations. Accordingly we would not object to payment of the RIT allowance claimed by Mr. Mitchell if otherwise proper.

Milton J. Socolar

Acting Comptroller General
of the United States