



**The Comptroller General
of the United States**

Washington, D.C. 20548

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Decision

Matter of: Utility Costs under Work-at-Home Programs
File: B-225159
Date: June 19, 1989

DIGEST

In the absence of statutory authority, appropriated funds may not be used for items that are the personal expenses of an employee. Exceptions to this rule have been permitted where the item primarily benefits the government. IRS employees participating in a work-at-home program may not be reimbursed for the incremental costs of utilities associated with the residential work-place, because such costs cannot be said to primarily benefit the government.

DECISION

The Chief of the Fiscal Management Branch, North Atlantic Region, Internal Revenue Service (IRS) asks whether work-related utility costs incurred by certain IRS employees voluntarily participating in a work-at-home program, hereinafter referred to as a flexiplace program, may be reimbursed. The utilities involved are used to run government-furnished equipment and to illuminate, heat or air condition the residential work-place. If any of these costs are allowable, the IRS wants to know how they should be computed and whether such reimbursement is optional or mandatory. We conclude that absent legislation authorizing such expenditures, incremental utility costs associated with the residential work-place may not be allowed.

BACKGROUND

The IRS has been interested in the flexiplace concept for several years. In the middle 1980's the North-Atlantic Region experimented with a flexiplace program for approximately three years involving criminal investigators in New York City. These agents normally worked in the field near their homes. The IRS installed computers and dedicated telephone lines in their homes, where the agents wrote their reports and transmitted them to the IRS Office. IRS terminated the experiment about two years ago when it

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determined that the highly-skilled agents in the flexiplace program were needed in the IRS Office to train and supervise less experienced investigators.

Currently, the IRS is experiencing a serious shortage of data transcribers due to intense competition from the private sector. In an effort to attract and/or retain data transcribers, the IRS would like to initiate a flexiplace program to permit such employees to perform their work in their homes. The flexiplace program is considered a desirable fringe benefit by many employees who would like the convenience of remaining at home, and depending on their circumstances, would like to avoid child care costs and/or the time and expense involved in daily commuting.

As contemplated by the IRS, the flexiplace program would be entirely voluntary. The IRS would arrange for the installation of government-furnished data transcription and telecommunications equipment and facilities in the employees' residences. The cost of the installation and telephone line charges would be billed directly to the government. The IRS would like to reimburse flexiplace program employees for the added increment of utility costs for work place lighting, heating, air conditioning and electrical power consumed by the government-furnished equipment incurred by virtue of their work place being in their homes. The IRS has sought our opinion on whether it may expend its appropriations for the reimbursement of these utility costs.

Acceptability of the Flexiplace Program

As a threshold matter, we must consider the permissibility of work-at-home programs and the installation of telephone line facilities in private residences. In the interest of fiscal accountability, our Office has approved the compensation of employees for work done at home only when: (1) the agency demonstrates that it will be able to verify and measure the performance of the assigned work against established quantity and quality norms; (2) a substantial amount of the employees' work is amenable to performance at the employee's home; and (3) there is a reasonable basis to justify the use of the home as a work place. See B-222246, Sept. 4, 1986, and B-214453, Dec. 6, 1984.

The proposed data transcription program satisfies these criteria. The data transcription equipment automatically measures productivity by recording the amount of work accomplished within a given time period, thereby permitting verification of measurable work. Upon the installation of the requisite equipment, the employees can perform all their

data transcription duties from the home work-station. Administrative matters generally can be handled over the phone or by periodic visits to the IRS Office. Finally, IRS adequately justifies the home work-place as an important fringe benefit to attract and/or retain competent data transcribers, who are in short supply in certain metropolitan areas and heavily recruited by private sector firms which frequently offer higher compensation. Accordingly, we conclude that the flexiplace program proposed by IRS satisfies the criteria set forth in our prior decisions.

The IRS proposal raises a second threshold issue concerning the general prohibition contained in 31 U.S.C. § 1348(a)(1)(1982) on the use of appropriated funds to install telephones in private residences. The purpose of this provision is to insure that the government does not bear the cost of private use of telephone equipment by government employees. We have permitted exceptions to the prohibition in circumstances consistent with the statute's purpose. These exceptions include situations where adequate safeguards against private misuse exist and where the service was essential. See 61 Comp. Gen. 214, 216 (1982). For example, we did not object to the installation of telephone lines in criminal investigators' homes in New York City in connection with the IRS flexiplace experiment. We concluded that the telephone service was essential and, subject to the establishment of safeguards to prevent misuse, approved the installation. 65 Comp. Gen. 835 (1986).

The circumstances surrounding the telephone service for the data transcriber flexiplace program is almost identical to the criminal investigator flexiplace experiment. The IRS will be able to establish safeguards to detect or prevent any private use of the telephone line by the data transcriber employees. In this regard, the IRS will require employees to maintain their own personal telephone lines in their residences and will be able to screen the monthly bills for the government-furnished lines to determine if any unauthorized long-distance calls were made. Accordingly, we conclude that the exception to section 1348 recognized in 65 Comp. Gen. 834 (1986) is equally applicable to the data transcriber flexiplace program.

Reimbursement of Utility Costs

The principal issue for resolution is whether IRS may reimburse flexiplace program employees for the incremental increase of residential utility costs associated with having their work place in their homes. IRS appropriations

contained in the Treasury Department Appropriations Act, 1989, Pub. L. No. 100-440, 102 Stat. 1721, do not specifically provide for utility costs, but do provide for "necessary expenses of the Internal Revenue Service, not otherwise provided." 102 Stat. 1725. As a general rule, appropriations for "necessary expenses" of any agency may be used for purposes not specifically set forth in the appropriations act, if the expenses in question are for the direct support of the agency's mission. See 27 Comp. Gen. 679 (1948) and 54 Comp. Gen. 1075-1076 (1975).

Utility costs associated with office space for government workers typically would be one of the costs satisfying the necessary expense rule. However, residential utility costs normally are considered the personal expenses of federal employees. An agency may not use appropriated funds to pay for items of personal expense unless there is specific statutory authority. 63 Comp. Gen. 296 (1984). We have allowed exceptions to this rule only where there is clear and convincing evidence that the expenditure that would ordinarily be a personal expense primarily benefits the government. For example, the Department of the Navy was authorized to use appropriated funds to reimburse a university employee for the cost of a physical examination required by Naval regulations in order for her to participate aboard ship in a Naval exercise as an official invitee. The physical examination was primarily for the benefit of the government to minimize the possibility of having to divert the ship, on which she was a passenger, from its mission. 65 Comp. Gen. 677 (1986).

We are not persuaded that the government would primarily receive the benefit of the incremental cost of utilities, such as heating, air conditioning, lighting, and the operation of government-furnished data processing equipment occasioned by the employee using his residence as his work place. It is difficult to apportion such utilities between those for which the employee is clearly responsible and any added increment attributable to having the work place in the residence. These apportionment difficulties also apply to the cost of electricity to operate government-furnished data processing equipment when the employee can use such equipment both for his own personal benefit and for official business. In addition to the apportionment problem, the use of utilities fluctuates over time in response to numerous factors such as the number, age, and health of the residential occupants, the season of the year, and short-term weather cycles. Other computational difficulties result from the different energy sources used to heat or cool residences plus regional cost variations of energy sources. In view of these problems we do not think it is

possible to accurately establish the benefit let alone the amount thereof that would inure to the government.

Apart from the above concerns, we think that the expenses an employee incurs as a result of participation in a flexiplace program should not be viewed in isolation. Balanced against these expenses are potential savings to the employee resulting, for example, from reduced commuting, child care, meal and/or clothing expenses. How the balance should be struck, if at all, between the potential costs and savings to an employee participating in a flexiplace program is a legislative judgement. This, together with our earlier concerns, leads us to conclude that these utility costs may not be allowed as an exception to the general rule on personal expenses.

If the IRS considers the payment of costs to employees important to the success of a flexiplace program, we think it should seek legislation authorizing the payment of these costs.^{1/} If proposed, we think such legislation should be comprehensive, addressing all potential work-at-home costs associated with such programs. In this regard, the legislation could be modeled on 5 U.S.C. §§ 5704 and 5707 (1982) which permits the General Services Administration to promulgate regulations and establish a fixed rate of reimbursement per mile of travel when a government employee uses his own vehicle for official travel.

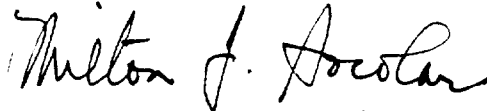
Since we have determined that these costs are unallowable, we need not address the issues raised by IRS concerning the computation of such costs and whether such payments are mandatory or discretionary.

SUMMARY

In the absence of specific legislative authority, we conclude that the IRS may not use appropriated funds for the reimbursement of employees for incremental utility costs for heating, air conditioning, lighting, and the operation of government-furnished data processing equipment associated with the residential work place, because such costs cannot

^{1/}Representative Frank Wolf recently introduced H.R. 2435, 101st Congress, 1st Session, to authorize federal agencies to test flexiplace work arrangements for their employees. As introduced, H.R. 2435 does not address the reimbursement of utility expenses of flexiplace employees.

be said to primarily benefit the government. Accordingly, they may not be allowed as an exception to the general rule on personal expenses.

A handwritten signature in cursive script, reading "Milton J. Aocular".

Acting Comptroller General
of the United States