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The Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

Matter of: Carlos Garcia, et al. - Application of  
Relocation Income Tax Allowance  
File: B-226640  
Date: December 15, 1987

### DIGEST

The Department of Agriculture requests an opinion as to whether claims for Relocation Income Tax (RIT) allowances may be paid to certain employees who were transferred from the United States to the Virgin Islands and Puerto Rico since the statutory authority in 5 U.S.C. § 5724b (Supp. III 1985) does not specifically state that RIT allowances apply to possessions of the United States. The claims may be paid since it is consistent with the intent of Congress that RIT allowances be extended to Federal employees transferred in the interest of the government to United States possessions and the Commonwealth of Puerto Rico in the same manner as those employees transferred within the United States. However, it will be necessary for the Administrator of General Services, in consultation with the Secretary of the Treasury, to establish the applicable marginal tax rate.

### DECISION

This decision is in response to a request by an authorized certifying officer of the United States Department of Agriculture, National Finance Center, for an opinion as to whether claims for Relocation Income Tax (RIT) allowances may be paid to certain employees who were transferred from the United States to the Virgin Islands and Puerto Rico. We conclude that the claims may be paid upon establishment by the General Services Administration of the applicable marginal tax rate.

### BACKGROUND

With the enactment of section 118(a)(7)(A)(i), Pub. L. 98-151, 97 Stat. 978, November 14, 1983, as amended by section 120(b), Pub. L. 98-473, 98 Stat. 1837, 1969, October 12, 1984, a new section was added to chapter 57, title 5, United States Code, to authorize agencies to

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reimburse transferred employees for the additional income tax liability incurred by them as a result of certain relocation expense reimbursements. This authority is contained in 5 U.S.C. § 5724b (Supp. III 1985), and it provides as follows:

" (a) Under such regulations as the President may prescribe and to the extent considered necessary and appropriate, as provided therein, appropriations or other funds available to an agency for administrative expenses are available for the reimbursement of substantially all of the Federal, State, and local income taxes incurred by an employee, or by an employee and such employee's spouse (if filing jointly), for any moving or storage expenses furnished in kind, or for which reimbursement or an allowance is provided (but only to the extent of the expenses paid or incurred). Reimbursements under this subsection shall also include an amount equal to all income taxes for which the employee and spouse, as the case may be, would be liable due to the reimbursement for the taxes referred to in the first sentence of this subsection.

"(b) For the purposes of this section 'moving or storage expenses' means travel and transportation expenses (including storage of household goods and personal effects under section 5724 of this title) and other relocation expenses under sections 5724a and 5724c of this title."

The President's authority to issue regulations concerning RIT allowances has been delegated to the General Services Administration (GSA), in consultation with the Secretary of the Treasury. See Exec. Order No. 12466, February 27, 1984, 3 U.S.C. § 301 note (Supp. III 1985). Thus, GSA issued implementing regulations on April 19, 1985, in Supplement 14 of the Federal Travel Regulations (FTR), incorp. by ref., 41 C.F.R. § 101-7.003 (1985). See also FTR Supplement 25, May 26, 1987, implementing changes necessitated by the Tax Reform Act of 1986, Pub. L. 99-515, 100 Stat. 2085, October 22, 1986.

As noted above, 5 U.S.C. § 5724b provides for reimbursement of substantially all of the Federal, State, and local income taxes incurred by an employee who is transferred in the interest of the government. However, the cited statutory provision does not specifically refer to territories or possessions of the United States or the Commonwealth of Puerto Rico as being within its sphere of coverage, nor do the implementing GSA regulations contain any reference to these jurisdictions.

Since the Department of Agriculture has many employees transferred to the territories and possessions of the United States as well as Puerto Rico, Agriculture requested clarification of this issue from GSA. On behalf of GSA, the Assistant Commissioner for Policy and Agency Liaison expressed the opinion that there is no authority to reimburse employees for additional income taxes imposed by United States possessions. The basis for the opinion was that the law, as amended, did not make any mention of income taxes imposed by a United States possession, nor was there any legislative history showing the intent of Congress regarding income taxes imposed by United States possessions. Since Agriculture had specific claims, the GSA official recommended that they be referred to our Office for a decision.

Thus, Agriculture has presented claims for reimbursement of RIT allowances for three of its employees, Carlos Garcia, who was transferred from Hidalgo, Texas, to San Juan, Puerto Rico, and Rose M. Brown and Robert J. Nadeau, who were transferred from Uniontown, Pennsylvania, and Tulare, California, to St. Croix and St. Thomas, Virgin Islands, respectively.

#### OPINION

We agree with GSA that section 5724b does not specifically refer to possessions of the United States and that there is nothing in the legislative history that would clarify this matter. However, it was the objective of the primary sponsors of the bill, Representative Frank B. Wolf and Senator John Warner, that this provision and several other changes made to the relocation statutes (providing for relocation services, increasing the household goods weight

allowance, etc.), would alleviate inequities and hardships which occur when a government employee is transferred. Consistent with this theme, we believe that section 5724b should be given a liberal interpretation. See NSA Employees, B-219547, July 17, 1987, 66 Comp. Gen. \_\_\_\_\_.

Although section 5724b does not refer to territories or possessions of the United States, it specifically refers in subsection (b) to other sections of the code for applicability, in particular 5 U.S.C. § 5724a concerning reimbursement of relocation expenses for transferred employees. Section 5724a provides for reimbursement of subsistence expenses when the employee's new official station is located within the United States, its territories or possessions, and the Commonwealth of Puerto Rico (subsection 5724a(3)), as well as expenses of the sale or purchase of a residence or the settlement of an unexpired lease when the old and new official duty stations are located within the United States, its territories or possessions, and the Commonwealth of Puerto Rico (subsection 5724a(4)(A)). Therefore, it would seem consistent with the statutory language and legislative intent that employees who are specifically authorized certain relocation expenses when transferred to United States territories or possessions or to the Commonwealth of Puerto Rico likewise should be entitled to reimbursement of a RIT allowance.

There are also certain provisions of the Internal Revenue Code that we believe support the conclusion that the RIT allowance should apply to employees who are transferred to United States possessions and territories, and the Commonwealth of Puerto Rico. As pointed out by Agriculture, the Federal income taxes withheld from employees of the United States who are employed by an agency in Guam or the Virgin Islands are paid into the treasuries of those possessions. 26 U.S.C. § 7654(d), as revised and amended by the Tax Reform Act of 1986.<sup>1/</sup> The same holds true for American Samoa and the Northern Mariana Islands. 26 U.S.C. § 7654(b)(2). Further, section 7651, regarding the

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<sup>1/</sup> All further references to Title 26 are as amended by the Tax Reform Act of 1986.

administration and collection of taxes in possessions, provides in subsection 7651(2)(B):

"(B) Applicable laws. All provisions of the laws of the United States applicable to the administration, collection, and enforcement of such tax (including penalties) shall, in respect of such tax, extend to and be applicable in such possession of the United States in the same manner and to the same extent as if such possession were a State, and as if the term 'United States' when used in a geographical sense included such possession."

Thus, for the purposes of the collection of Federal income taxes imposed on government employees who work and reside in the possessions of the United States, the possession is treated as a state.

Further, we note that GSA has defined a state income tax for purposes of reimbursement for a RIT allowance in the FTR and has established marginal tax rates for the 50 states and the District of Columbia. See FTR para. 2-11.5a and Appendix 2-11A. No marginal tax rate has been established for the territories and possessions of the United States; however, GSA refers to the Internal Revenue Code for a definition of a state income tax, and that definition of a state tax includes a tax imposed by a possession of the United States. 26 U.S.C. § 164(b)(2). Thus, GSA's definition appears to be too narrow in scope since, in effect, the tax deducted from the employee's salary in a possession of the United States takes on the character of a state tax by virtue of the fact that it is paid into the treasury of that possession.

As regards the Commonwealth of Puerto Rico, we note that employees of the United States and its agencies pay a Federal income tax in the same manner as residents of the United States. 26 U.S.C. § 933. We also note that 26 U.S.C. § 7701(d) states that where not otherwise distinctly expressed, references in the Internal Revenue Code to possessions of the United States also refer to Puerto Rico. Also, as previously stated, the Commonwealth

of Puerto Rico is specifically referred to in 5 U.S.C. § 5724a for the purposes of reimbursement for nearly all of the applicable relocation expenses.

Therefore, we believe that it is consistent with the intent of Congress that the RIT allowance be extended to those Federal employees who are transferred in the interest of the government to United States possessions and the Commonwealth of Puerto Rico in the same manner as those employees transferred within the United States. Although the tax rate for the possessions and the Commonwealth of Puerto Rico parallels the Federal tax rate, we believe it will be necessary for GSA, in consultation with the Secretary of the Treasury, to establish the applicable marginal tax rate. See Exec. Order No. 12466, supra.

Accordingly, the claims of these and other similarly situated employees may be paid upon establishment by GSA of the applicable marginal tax.

*for Milton J. Bowler*  
Comptroller General  
of the United States