





United States
General Accounting Office
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Office of the General Counsel

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September 29, 1987

The Honorable Stan Parris
Member, United States
House of Representatives
6901 Old Keene Mill Road
Springfield, Virginia 22150

Dear Mr. Parris:

This responds to your letter of August 19, 1987, concerning Ms. Winifred M. Brickenstein's request that her resignation from the United States Department of State be backdated from December 31 to December 20, 1986, so that she will not be considered a participant in the civil service retirement system during 1987 and may join her husband in claiming the maximum tax deduction for individual retirement account (IRA) contributions in 1987. For the reasons explained below, we have found no legal basis for changing Ms. Brickenstein's resignation date.

Ms. Brickenstein indicates that she resigned from the State Department in 1986 because the Tax Reform Act of 1986 allows a working couple with adjusted gross income over \$40,000 to claim the maximum \$4,000 deduction for IRA contributions in 1987 only if neither spouse actively participates in an employer-maintained pension plan during the year. Ms. Brickenstein's husband was not actively participating in a pension plan, and Ms. Brickenstein wished to terminate her own coverage under the civil service retirement system before the beginning of 1987. Accordingly, Ms. Brickenstein states that she worked with her supervisors and a State Department personnel specialist to devise an arrangement under which she would resign from her position at the end of 1986 and then later would be rehired as a temporary employee not eligible for civil service retirement coverage.

Ms. Brickenstein further states that she asked the State Department personnel specialist whether the specific date of her resignation in December 1986 would make any difference for tax purposes and that the personnel

specialist answered "no." By memorandum dated December 15, 1986, Ms. Brickenstein tendered her resignation effective December 31, 1986. Ms. Brickenstein explains that she decided to resign on December 31 rather than on an earlier date because her office was shorthanded at the time.

Ms. Brickenstein received pay for her work between December 21 and December 31, 1986, in January 1987. Her contributions for civil service retirement were deducted from that pay. When Ms. Brickenstein returned to work for the State Department as a temporary employee in March 1987, she questioned staff in various offices about the tax consequences of her 1987 retirement contributions but the staff advised her that they could not provide her with definitive advice. Ms. Brickenstein then requested that the State Department backdate her resignation from December 31 to the close of business on December 20, 1986. The State Department denied her request apparently on the basis of our decisions discussed below.

Ms. Brickenstein requested an Internal Revenue Service (IRS) ruling on the tax consequences of the deduction of civil service retirement contributions from her pay in 1987. The IRS concluded that, because Ms. Brickenstein received pay subject to deduction for retirement contributions in 1987, she must be regarded as an active participant in a retirement plan during 1987 for purposes of the rules governing IRA deductions.

Ms. Brickenstein requests that we allow backdating of her resignation from December 31 to the close of business on December 20, so that she may avoid being considered a participant in a retirement system during 1987. She contends that it would be unfair to deny a change in her resignation date because the State Department personnel specialist had not given her correct information concerning the tax consequences of the date she selected.

As the State Department apparently recognized, our long-standing rule is that the date of a separation by resignation is the date tendered by the employee, and such date may not be challenged once it has become an established fact. See 62 Comp. Gen. 620 (1983); 32 Comp. Gen. 111 (1952). While we have recognized certain exceptions to this rule, we have consistently declined to permit a change in an employee's separation date solely because the employee selected the date without being aware that application of a particular law or policy would prove the separation date to be disadvantageous. See Antoni Sniadach, 64 Comp. Gen. 301 (1985); Frank A. Fishburne, B-199667, October 7, 1980; B-171970, March 11, 1971. Accordingly, although Ms. Brickenstein did not realize at the time she chose her

resignation date that the IRS would consider retirement contributions deducted from her pay in 1987 as actively involving her in a retirement plan during the year, this fact alone does not warrant a change in her separation date. Also, although Ms. Brickenstein alleges that her choice of resignation date was influenced by incorrect advice from the State Department personnel specialist, the personnel specialist was not in a position to provide Ms. Brickenstein with authoritative guidance concerning tax matters, and, in any event, it is well settled that the government cannot be bound by the erroneous acts or advice of its agents. See William L. Walbert, 58 Comp. Gen. 539, 541 (1979); Joseph Pradarits, 56 Comp. Gen. 131, 136 (1976).

We are enclosing copies of the decisions cited above, with the hope that this information will enable you to respond to your constituent.

Sincerely yours,

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel

Enclosures