

Botsford



**The Comptroller General  
of the United States**

Washington, D.C. 20548

**Decision**

**Matter of:** Department of Energy - Personal Use of Frequent  
Flyer Benefits - Employee's Liability  
**File:** B-233388  
**Date:** March 23, 1990

**DIGEST**

1. An employee converted bonus certificates he received from an airline's frequent flyer program based on official travel into free tickets which he used for personal travel. The employee is indebted to the government for the fair market value of the tickets, determined as of the dates he exchanged the certificates for flight tickets.
2. An employee redeemed a large quantity of mileage points received from an airline's frequent flyer program based on official travel. He used the free tickets he received for personal travel, but the airline's records as to the redemption of points during that period are no longer available. Since the employee is indebted for the fair market value of the tickets, the department may construct a hypothetical use of the points, choosing travel from possible locations.
3. An employee earned mileage points from an airline's frequent flyer program which have not been redeemed. The department should require the employee to account for the mileage points and to obtain certificates good for free tickets to be used by the department for official travel.

**DECISION**

This decision is in response to a request from the Department of Energy for our determination concerning the amount of a debt owed by an employee of the department.<sup>1/</sup> The debt arose as the result of the employee's personal use of free bonus tickets he received and mileage points he accumulated through a frequent flyer program while primarily traveling on official business. The Department of Energy

<sup>1/</sup> Requested by Elizabeth E. Smedley, Controller, Department of Energy. GAO Claims File Z-2861247.

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has asked what values should be placed on the free tickets, the redeemed mileage points, and the unredeemed mileage points remaining in the employee's account.

We hold that the value of the free bonus tickets is their purchase price on the day the employee obtained the tickets. With regard to the tickets obtained through the redemption of mileage points, since it is not known for what travel they were redeemed, the agency may use the value of tickets to any of the possible destinations as a measure of the employee's debt. Finally, the unredeemed mileage points should be turned over to the appropriate agency official in accordance with section 101-25.103 of Title 41, Code of Federal Regulations (CFR) and Federal Travel Regulations para. 1-1.6b (Supp. 9, May 14, 1984), incorp. by ref., 41 C.F.R. § 101-7.003 (1987).

#### BACKGROUND

The employee in question was a member of the Braniff Airways Bonus Bonanza Flight Club and the American Airlines AAdvantage program. Records for the Bonus Bonanza Flight Club are unavailable due to Braniff's bankruptcy and subsequent reorganization. However, from June 22, 1981, when the employee joined the American Airlines AAdvantage program, until August 31, 1986, he earned 368,726 mileage points, 355,957 of which were accumulated on official travel. He redeemed 230,000 of these points, but records as to their use are unavailable since American Airlines destroyed all mileage point redemption requests made prior to October 1984. Approximately 125,000 mileage points remain in the employee's account with American Airlines.

In connection with the employee's large amount of travel on American Airlines, he was given free bonus certificates which he used to obtain four free airline tickets without any reduction in his mileage points. During two flights, the employee was given a free upgrade to first class.

#### OPINION

The General Services Administration has issued regulations which provide that "[a]ll promotional materials . . . received by employees in conjunction with official travel and based on the purchase of a ticket or other services . . . are properly considered to be due the Government and may not be retained by the employee." See Federal Property Management Regulation (FPMR) 101-25.103-2(a), 41 C.F.R. § 101-25.103 (1987). These regulations provide that promotional materials providing for future free or reduced costs of travel should be integrated into the agency travel

plans to maximize the benefits to the Government. Promotional materials that cannot be used by the agency are to be disposed of in accordance with 41 C.F.R. § 101-25.103-4. See also FTR para. 1-1.6b cited above.

This Office has held that a federal employee is required to account for any gift, gratuity, or benefit received from private sources incident to the performance of official duty and any payments tendered to the employee must be viewed as having been received on behalf of the government. See John B. Currier, 59 Comp. Gen. 95 (1979), and cases cited therein. An employee may not retain any bonus points, coupons, or similar items of value received from a commercial air carrier on the basis of a purchase of airline tickets used for official travel. See B-199656, July 15, 1981. In subsequent decisions we held that bonus tickets received by an employee as the result of a combination of official and personal travel are also the property of the government and must be turned in to the appropriate agency official. See Discount Coupons, 63 Comp. Gen. 229 (1984); Abraham Frydham, B-212559, Feb. 24, 1984.

Since it is clear that the employee is indebted to the government for the personal use he made of the frequent flyer benefits, the issue is what value should be placed on the benefits the employee received. The issue is addressed below for the three types of benefits received.

#### I. Valuation of free bonus tickets

In John D. McLaurin, 63 Comp. Gen. 233 (1984), we held that "use of promotional material will result in the employee being liable to the Government for the full value of the bonuses or promotional gifts used." See also Michael Farbman, 67 Comp. Gen. 79 (1987).

The employee contends that, since he obtained the tickets well in advance of the flights used, the value of the tickets is the discounted advance purchase fare for the four tickets totalling \$1,651.04. The Controller of the Department of Energy takes the position that "full value" means the full fare, non-discounted value of each ticket. American Airlines places a full fare, non-discounted value on the tickets totalling \$4,836.00.

In resolving this dispute, an analogy to the law of conversion is appropriate since we have held that promotional benefits received as the result of official travel belong to the government. The common law rule in an action for conversion of property is that the owner may recover the

fair market value of the property. See 18 Am. Jur. 2d Conversion § 105,219 (1985). Ordinarily, the value is determined as of the time of the conversion. See 18 Am. Jur. 2d Conversion § 108,222 (1985).

Thus, the employee's debt should be the fair market value of all he received. In this case the time of conversion, for purposes of determining the fair market value of the bonus tickets, should be considered to be the day the employee obtained the tickets. At that time, he converted the certificates he had received from the airline into flight tickets which enabled him to fly on personal travel. Since these certificates rightfully belonged to the government, he should have turned them over to the government. It was at the time that he exchanged the certificates for tickets that the conversion occurred. Therefore, the advance fare charged by the airline at that time is the proper value to attach to the four free tickets.

Since the employee obtained regular coach tickets, it would not be appropriate to assign first class fare value unless it is clear that the certificates entitled the employee to first class seats. Nor would it be appropriate to require the employee to refund the value of the first class upgrades he received during his trip to Hawaii. We have held that, although employees may not exchange mileage credits for accommodation upgrades without agency authorization, items such as "free" upgrades to first class do not have to be accounted for. See Michael Farbman, 67 Comp. Gen. 79, supra, modifying Discount Coupons, 63 Comp. Gen. 229, supra. Since the employee here received "free" upgrades, he is not liable for their value.

## II. Valuation of redeemed mileage points

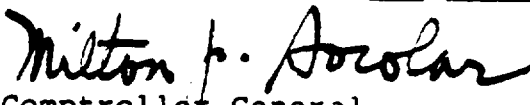
The employee in question also redeemed 230,000 mileage points but American Airlines no longer has records concerning their use. The Controller of the Department of Energy proposed valuing the points at \$1,936.00, based on the agency's most frequent travel destinations. Since the airline's records as to the use of these points are no longer available, we do not object to a determination of debt based on constructive travel. As we discussed earlier in this decision, when an employee converts bonus points or other promotional materials earned on official travel to his own use, he must reimburse the government for their value and the measure of that value is the fair market value of the benefits he received. Therefore, unless the employee reveals how he used the mileage points, the agency may construct a hypothetical use for the points, choosing time

and location of travel from among the possible redemption locations.

### III. Unredeemed mileage points

The final question posed by the Department of Energy Controller is what should be done with the unredeemed mileage points remaining in the employee's account. In accordance with FTR paragraph 1-1.6b and 41 C.F.R. 101-25.103-2, all promotional materials received by employees on official travel are considered government property and may not be retained by the employee. Hence, the department should require the employee to account for earned but unredeemed mileage points. The department should have a policy to regularly scrutinize employee compliance with federal travel regulations to insure that employees are maximizing available travel discounts. See "Use of Discount Airline Fares and Teleticketing Would Help Save on Government Travel Expenses" (FGMSD-78-46, B-103315, July 21, 1978) at 13. The same rationale applies here, where accounting for mileage credits earned on behalf of the government could result in a more efficient utilization of federal travel dollars. Agency requirements to account for mileage credits earned in conjunction with official travel also would further the purpose of the GSA regulation, discussed previously, requiring the integration of promotional coupons into agency travel plans to maximize benefits to the government.

Since the American Airlines frequent flyer program involves obtaining certificates good for free tickets, the employee in this case should be directed to obtain certificates to be used for official travel, either in his own name or in the name of another employee or employees designated by the department. Finally, the department, not the employee, has the discretion to decide whether unredeemed mileage points should be used for alternative benefits (such as upgrades, discounts, etc.). See Michael Farbman, supra.

  
Acting Comptroller General  
of the United States