McCann

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rudolph A. Chesnik II - Relocation Income Tax Allowance Regulations

File: B-235328

Date: February 23, 1990

DIGEST

Employee contends that his own alternative method of calculating the Relocation Income Tax allowance (RIT allowance) is better than the method prescribed by General Services Administration's (GSA's) regulations. His claim for additional reimbursement is denied since he has not demonstrated either that the regulations are inconsistent with the statutory authority or that these regulations are arbitrary or unreasonable on their face.

DECISION

This decision is in response to an appeal by Rudolph A. Chesnik II from the action of our Claims Group which denied his claim for an additional $1,020.32 of Relocation Income Tax Allowance (RIT allowance) incident to his permanent change of station.1/ Mr. Chesnik does not dispute the correctness of the calculation of his RIT allowance under the current statute and regulations but contends that his own alternative method of calculating the RIT allowance is better for several reasons. For the following reasons, we affirm our Claims Group's action and deny his claim.

BACKGROUND

Mr. Chesnik, an employee of the Internal Revenue Service (IRS), transferred to his new duty station on January 18, 1987. Incident to that relocation, the IRS paid Mr. Chesnik a total gross RIT allowance of $2,572.86, as

1/ Settlement Certificate, Z-2865931, Dec. 8, 1988.

calculated under the applicable statute and regulations.2/ Mr. Chesnik does not dispute the calculation of his RIT allowance under these regulations but contends that his RIT allowance is incorrect because the regulations under which it was calculated are based on incorrect assumptions. Mr. Chesnik challenges the assumptions in the Federal Travel Regulations (FTR), Supp. 27, that employees will receive the benefit of allowable moving expense deductions as an offset to income either by itemizing their moving expense deductions or through increased standard deductions. He argues that the increased standard deduction was small, that he was entitled to that increased deduction regardless of his moving expense reimbursements, and that he does not receive comparable benefits by itemizing deductions.

Mr. Chesnik then proposes an alternative method to calculate the RIT allowance, which allegedly computes the RIT allowance on the basis of comparisons to using standard deductions, and which he alleges is superior to the method currently prescribed by the FTR. Using this alternative method, Mr. Chesnik claims an additional $1,020.32.3/

The IRS contends that Mr. Chesnik's RIT allowance was calculated properly under the statute and applicable regulations, cited above, and that the RIT allowance was authorized to reimburse eligible transferred employees only for substantially all of the additional federal, state, and local income taxes incurred by employees as a result of their relocations.

OPINION

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. V 1987). Applicable regulations promulgated pursuant to that authority are found in chapter 2, part 11 of the FTR.

2/ See 5 U.S.C. § 5724b (Supp. V 1987). The RIT allowance regulations which are applicable in Mr. Chesnik's case are found at paragraph 2-11 of the FTR, as amended (Supp. 25, May 26, 1987 and Supp. 27, May 12, 1988), incorp. by ref., 41 C.F.R. § 101-7.003 (1988).

3/ The mechanics of this alternative method are summarized in our Claims Group's Settlement Certificate, Z-2865931, Dec. 8, 1988.

As we view this matter, Mr. Chesnik's argument is essentially that the regulations governing RIT allowances are inconsistent with the statutory authorization, that is, GSA has acted outside its statutorily authorized powers in promulgating these regulations, or that the regulations are arbitrary or unreasonable on their face.

It is fundamental that federal agencies and officials must act within the authority granted to them by statute in issuing regulations. It is equally fundamental, however, that regulations are deemed to be within an agency's statutory authority and consistent with congressional intent unless shown to be arbitrary or contrary to the statutory purpose. See 64 Comp. Gen. 319, 321 (1985), and cases cited therein.

In the present case, 5 U.S.C. § 5724b(a) (Supp. V 1987), in relevant part, provides:

> "(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 [certain relocation expenses as further specified]."

The FTR authorizes 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. 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. See A.J. Mitchell, Jr., 66 Comp. Gen. 478 (1987).

In his appeal, Mr. Chesnik argues that, by comparing his taxable income for 1987 without the relocation expense reimbursement but minus the standard deduction to his taxable income for 1987 with the relocation expense reimbursement and minus itemized deductions, he incurred nearly $8,000 of additional taxable income. He contends that after reimbursement for the RIT allowance, nearly $2,000 of taxes for 1987 have not been reimbursed.

In essence, Mr. Chesnik seeks to compute his entitlement to the RIT allowance without regard to the deductions available

to him under the applicable tax laws. The IRS, however, computed his RIT allowance on the basis of his actual tax liabilities. Thus, the agency compared his tax liability on his taxable income with and without the move, and the agency determined that while he paid over $1,800 more in federal income tax in 1987, his RIT allowance of over $2,200 more than satisfied his federal tax liability and left a balance of nearly $400 for state tax liability.

As noted above, the IRS computed Mr. Chesnik's reimbursement in accordance with the regulations implementing section 5724b. In view of the discretion which the statute allows GSA to determine the extent to which taxes on relocation expenses may be reimbursed, we cannot conclude that these regulations are arbitrary or unreasonable on their face. At best, Mr. Chesnik's argument presents a policy matter which GSA may wish to consider.

Finally, we note that Mr. Chesnik's argument as to the amount the IRS showed on his Form W-2 for the taxable year 1987 is a matter for consideration by the IRS, and not our Office.

Accordingly, we affirm the denial of Mr. Chesnik's claim.

for Milton J. Socolar
Comptroller General
of the United States