



United States
General Accounting Office
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Office of the General Counsel

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November 19, 1993

Jeanne DiGange
Authorized Certifying Officer
U.S. Department of Agriculture
National Finance Center
P.O. Box 60000
New Orleans, Louisiana 70160

Dear Ms. DiGange:

We refer to your letter of May 18, 1993, reference: FSD-1 RJP, in which you raise several issues concerning the payment of claims for Relocation Income Tax allowances (RIT) under the provisions of 5 U.S.C. § 5724b (1988), to employees who transfer from the United States to the Virgin Islands, Puerto Rico, and United States territories and possessions.

In a decision of the Comptroller General, Carlos Garcia, et al., 67 Comp. Gen. 135 (1987), we held that employees of the Department of Agriculture who transfer from the United States to the Virgin Islands and Puerto Rico may be paid RIT allowances in the same manner as those employees transferred within the United States. However, since regulations were not in effect at that time, we concluded that it would be necessary for the Administrator of General Services (GSA), in consultation with the Secretary of the Treasury, to establish the applicable marginal tax rate.

The Administrator, GSA promulgated the necessary regulations at 58 Fed. Reg. 15,436, on March 23, 1993, with a retro-active effective date of January 1, 1987, and made it applicable to Year 1 covered reimbursements made on or after January 1, 1987.

You raise several issues that arise because GSA made the regulation effective for reimbursements made on or after January 1, 1987, and because GSA took almost 6 years to establish a marginal tax rate. The following information is provided in response to your inquiry.

As pointed out in our decision Carlos Garcia, et al., 67 Comp. Gen. 135, supra, GSA, in consultation with the Secretary of the Treasury, has been authorized to issue

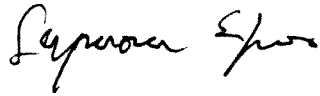
regulations concerning RIT allowances. GSA has exercised its authority and issued regulations, but has limited its application to Year 1 covered reimbursements made on or after January 1, 1987. However, the RIT allowances for the three Agriculture employees that we held were entitled to be paid, namely , and , were for transfers that occurred prior to 1987.

Since we held in our decision that the three employees are entitled to payment, we believe that reimbursement may now be made for these employees on a constructive basis. We note that this should not present a problem in computing reimbursement of taxes for and since they were transferred to the Virgin Islands, and the marginal tax rate is of no consequence since it is identical to the federal marginal tax rate, and tables are available for the years in question. See, 41 C.F.R. § 302-11.8(e)(4)(ii) (1993). As regards , who was transferred to Puerto Rico, his reimbursement should be constructed as near as possible pursuant to the instructions in 41 C.F.R. § 302-11.8(e)(4) (1993).

Regarding the payment of interest on claims for reimbursement of a RIT allowance, the government is not responsible for interest payments unless a statute or regulation specifically directs such payment. The Back Pay Act, 5 U.S.C. § 5596 (1988), provides for the payment of interest, but only where an unjustified or unwarranted personnel act has occurred, and we do not believe that that is the case here.

If you are in receipt of any doubtful claims for a RIT allowance that predate the GSA regulation, including the application of our barring act, we are willing to consider them for settlement at a later date.

Sincerely yours,


James F. Hinchman
General Counsel