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B-171667, Mar 2, 1971

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ATTORNEY - MEMBERSHIP FEES DECISION DENYING CLAIM FOR REIMBURSEMENT OF ROBERT M. SOLOMAN COVERING AN EXPENSE INCURRED BY HIM INCIDENT TO MAINTAINING HIS STATUS AS AN ATTORNEY IN GOOD STANDING OF THE STATE BAR OF CALIFORNIA. ALTHOUGH CLAIMANT MUST PAY $50 ANNUALLY TO MAINTAIN HIS STATUS AS AN ATTORNEY IN GOOD STANDING AND AS AN ESTATE TAX ATTORNEY EMPLOYED BY INTERNAL REVENUE SERVICE HE IS REQUIRED TO BE A MEMBER IN GOOD STANDING OF THE BAR OF ONE OF THE STATES OR DISTRICT OF COLUMBIA, SUCH AN EXPENSE IS PERSONAL AND AS SUCH IS NOT REIMBURSABLE. FURTHER, 5 U.S.C. 5946 PROHIBITS THE USE OF APPROPRIATED FUNDS TO PAY MEMBERSHIP FEES OR DUES OF AN EMPLOYEE IN A SOCIETY OR ASSOCIATION.

TO MR. F. C. FENTON:

WE REFER TO YOUR LETTER OF DECEMBER 23, 1970 (YOUR REFERENCE AD: FFV), WITH AN ENCLOSED VOUCHER FOR $50 IN FAVOR OF MR. ROBERT M. SOLOMON, COVERING AN EXPENSE INCURRED BY HIM INCIDENT TO MAINTAINING HIS STATUS AS AN ATTORNEY IN GOOD STANDING OF THE STATE BAR OF CALIFORNIA. YOU REQUEST AN ADVANCE DECISION AS TO THE PROPRIETY OF CERTIFYING THE VOUCHER FOR PAYMENT.

THE PERTINENT FACTS ARE STATED IN YOUR LETTER AS FOLLOWS:

"1. ROBERT M. SOLOMON, ESTATE TAX ATTORNEY, IS A MEMBER OF THE STATE BAR OF CALIFORNIA, AS REQUIRED BY LAW. THE STATE BAR IMPOSES AN ANNUAL FEE FOR MEMBERSHIP ON ALL OF ITS MEMBERS. MR. SOLOMON WAS ADMITTED IN JANUARY, 1964 AND HIS FEE FOR THE YEAR 1970 IS $50.00.

"2. AS EXPLAINED IN MR. SOLOMON'S MEMORANDUM DATED NOVEMBER 5, 1970 (ENCLOSURE 3), AN ESTATE TAX ATTORNEY (GS-905-13) IS REQUIRED TO BE A MEMBER IN GOOD STANDING OF THE BAR OF ONE OF THE STATES OR THE DISTRICT OF COLUMBIA. IF THAT EMPLOYEE IS NOT A MEMBER IN GOOD STANDING OF A STATE BAR, HE WILL BE SEPARATED FROM HIS EMPLOYMENT.

"3. THE STATE OF CALIFORNIA REQUIRES THAT EACH MEMBER PAY THE ANNUAL MEMBERSHIP FEE OR BE DROPPED FROM THE ROLLS OF ATTORNEYS IN THE STATE. THIS WOULD RESULT IN MR. SOLOMON BEING SEPARATED FROM HIS EMPLOYMENT WITH THE INTERNAL REVENUE SERVICE."

QUALIFICATION REQUIREMENTS FOR VARIOUS POSITIONS IN THE FEDERAL SERVICE ARE ESTABLISHED PURSUANT TO THE AUTHORITY PROVIDED IN 5 U.S.C. 5105 AND 5112. UNDER THIS BASIC AUTHORITY IT HAS BEEN DETERMINED THAT TO QUALIFY AS ESTATE TAX ATTORNEYS PERSONS MUST BE MEMBERS IN GOOD STANDING OF THE BAR OF ONE OF THE STATES OR OF THE DISTRICT OF COLUMBIA. THERE IS NO REQUIREMENT OR PREFERENCE AS

TO WHICH STATE BAR THE EMPLOYEE SELECTS FOR ADMISSION. MR. SOLOMON CHOSE TO SEEK ADMISSION TO THE CALIFORNIA BAR, WHICH IS AN INTEGRATED BAR JURISDICTION. ALL PRACTICING ATTORNEYS IN THAT STATE ARE REQUIRED TO BE MEMBERS OF THE STATE BAR AND ARE SUBJECT TO THE RULES OF THE BAR INCLUDING A PROVISION FOR THE PAYMENT OF AN ANNUAL FEE TO ADMINISTER THE PURPOSES OF THE INTEGRATED BAR. SEE 7 AM. JUR. 2D, ATTORNEYS AT LAW SEC 7. AS A MEMBER OF SUCH BAR MR. SOLOMON MUST PAY ANNUAL DUES TO REMAIN IN AN "ACTIVE" STATUS. INSOFAR AS HIS EMPLOYMENT WITH THE INTERNAL REVENUE SERVICE IS CONCERNED HE MUST MAINTAIN MEMBERSHIP BEFORE THIS BAR, OR THE BAR OF ANY OTHER STATE OR THE DISTRICT OF COLUMBIA, AND TO LOSE THAT STATUS WOULD RESULT IN DISQUALIFICATION FOR HIS GOVERNMENT EMPLOYMENT AS AN ESTATE TAX ATTORNEY.

MR. SOLOMON'S ORIGINAL REQUEST WAS ADMINISTRATIVELY DENIED ON THE BASES OF OUR DECISIONS 22 COMP. GEN. 460 (1942) AND 47 ID. 116 (1967). ARGUES THAT HIS SITUATION IS DISTINGUISHABLE FROM THOSE DECISIONS FOR THE REASON THAT HE IS REQUIRED TO PAY DUES ANNUALLY. IN BOTH DECISIONS WE CONSIDERED A GOVERNMENT ATTORNEY'S ENTITLEMENT TO REIMBURSEMENT FOR NOMINAL FEES NECESSARILY EXPENDED TO REPRESENT HIS PARTICULAR AGENCY BEFORE A UNITED STATES COURT OF APPEALS, AND IT WAS HELD "THAT ADMISSION TO PRACTICE BEFORE A FEDERAL COURT WAS A MATTER OF PERSONAL QUALIFICATION FOR THE ATTORNEY CONCERNED," AND THAT THE RELEVANT APPROPRIATIONS "WERE NOT AVAILABLE TO REIMBURSE ATTORNEYS FOR A NOMINAL FEE REQUIRED BY THE COURT AS A CONDITION OF ADMISSION TO PRACTICE." ALTHOUGH A ONE-TIME FEE WAS THERE INVOLVED, THE PRINCIPLE THAT AN EXPENSE OF QUALIFICATION IS PERSONAL IS THE SAME.

IN ADDITION TO THE FOREGOING IT HAS BEEN REPEATEDLY HELD THAT WHERE A FEDERAL EMPLOYEE MUST SECURE PERMITS OR LICENSES TO PERFORM THE DUTIES OF HIS POSITION IT IS A MATTER OF PERSONAL QUALIFICATION AND THE FEES INCIDENT TO PROCURING SAME "WOULD BE AN EXPENSE NECESSARY TO QUALIFY (HIM) FOR THE DUTIES REQUIRED OF (HIM) AND REIMBURSEMENT THEREFOR WOULD NOT BE AUTHORIZED." 3 COMP. GEN. 663, 665 (1924). SEE ALSO 6 ID. 432 (1926) AND 31 ID. 81 (1951); COMPARE WITH 46 ID. 695 (1967). THE EXPENSE INCURRED BY MR. SOLOMON IS AN EXPENSE OF PERSONAL QUALIFICATION AND AS SUCH NOT REIMBURSABLE.

THERE IS ALSO FOR CONSIDERATION 5 U.S.C. 5946 WHICH PROVIDES IN PART THAT:

"EXCEPT AS AUTHORIZED BY A SPECIFIC APPROPRIATION, (OR) BY EXPRESS TERMS IN A GENERAL APPROPRIATION *** APPROPRIATED FUNDS MAY NOT BE USED FOR PAYMENT OF -

"(1) MEMBERSHIP FEES OR DUES OF AN EMPLOYEE *** IN A SOCIETY OR ASSOCIATION *** "

AN EXAMINATION OF THE RELEVANT APPROPRIATION ACTS DOES NOT REVEAL LANGUAGE THAT WOULD AUTHORIZE THE EXPENDITURE OF APPROPRIATED FUNDS FOR THE PURPOSE CONTEMPLATED BY MR. SOLOMON'S VOUCHER. ACCORDINGLY, WE CONCLUDE THAT THE CONDITIONS PRESCRIBED IN 5 U.S.C. 5946 ARE NOT SATISFIED.

FOR THE FOREGOING REASONS THE VOUCHER DOES NOT REPRESENT A REIMBURSABLE EXPENSE AND THEREFORE MAY NOT BE CERTIFIED FOR PAYMENT. AS REQUESTED THE ORIGINAL VOUCHER WITH SUPPORTING DOCUMENTS IS RETURNED.