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B-172621, JULY 21, 1976, 55 COMP.GEN. 1293

TRAVEL EXPENSES - CONTRIBUTIONS FROM PRIVATE SOURCES - ACCEPTANCE BY AGENCY - TAX EXEMPT ORGANIZATIONS INTERNAL REVENUE SERVICE (IRS) PROPOSAL THAT IT PAY EXPENSES OF EMPLOYEE ATTENDING MEETINGS AND ACCEPT REIMBURSEMENT DIRECTLY FROM ELIGIBLE TAX EXEMPT ORGANIZATIONS, CREDITING SUCH REIMBURSEMENT TO ITS OWN APPROPRIATION, IS NOT AUTHORIZED BY APPLICABLE STATUTES. PROVISIONS OF 5 U.S.C. 4111 PERMIT EMPLOYEE ONLY TO ACCEPT PAYMENTS FROM ELIGIBLE ORGANIZATIONS, WHICH PAYMENTS ARE TO BE DEDUCTED FROM AMOUNTS OTHERWISE DUE FROM EMPLOYING AGENCY. MOREOVER, IN ABSENCE OF SPECIFIC AUTHORITY TO ACCEPT VOLUNTARY CONTRIBUTIONS OR TRAVEL REIMBURSEMENTS, IRS WOULD BE REQUIRED TO DEPOSIT SUCH FUNDS INTO MISCELLANEOUS RECEIPTS OF THE TREASURY BY 31 U.S.C. 484 (1970).

IN THE MATTER OF DONOR PAYMENTS TO INTERNAL REVENUE SERVICE FOR EMPLOYEE MEETING ATTENDANCE COSTS, JULY 21, 1976:

THIS DECISION IS IN RESPONSE TO A REQUEST FROM WARREN F. BRECHT, ASSISTANT SECRETARY FOR ADMINISTRATION, DEPARTMENT OF THE TREASURY, CONCERNING THE FOLLOWING MATTER.

UNDER THE AUTHORITY OF 5 U.S.C. 4111 (1970) AS IMPLEMENTED BY 5 CFR 410.701-410.706, AN EMPLOYEE MAY BE ALLOWED TO ACCEPT PAYMENT OF TRAVEL, SUBSISTENCE, AND OTHER EXPENSES INCIDENT TO ATTENDANCE AT A MEETING, IF THE PAYMENT IS MADE BY AN ORGANIZATION DESCRIBED BY 26 U.S.C. 501(C)(3) (1970) WHICH IS EXEMPT FROM TAXATION UNDER 26 U.S.C. 501(A) (1970).

THE REQUEST STATED THAT:

THE INTERNAL REVENUE SERVICE WANTS TO TAKE ADVANTAGE OF THIS PROVISION IN CONNECTION WITH SOME TRAVEL BY ITS EMPLOYEES. HOWEVER, IT IS PROPOSED THAT PAYMENT FOR THE TRAVEL BE MADE BY THE SERVICE; AND THAT PAYMENT BY THE ORGANIZATION BE RECEIVED BY THE SERVICE FOR CREDIT TO THE APPROPRIATION CONCERNED. AS THIS PROCEDURE WOULD BE CONTRARY TO A LITERAL INTERPRETATION OF THE LAW, ITS PROPRIETY HAS BEEN QUESTIONED. THE INTERNAL REVENUE SERVICE DOES NOT HAVE AUTHORITY TO ACCEPT GIFTS.

CONSEQUENTLY, OUR DECISION AS TO THE PROPRIETY OF THE DESCRIBED PROCEDURE WAS REQUESTED.

ABSENT SPECIFIC AUTHORIZING LEGISLATION, THERE IS NO AUTHORITY FOR AN OFFICIAL OF THE GOVERNMENT TO ACCEPT ON BEHALF OF THE UNITED STATES VOLUNTARY DONATIONS OR CONTRIBUTIONS OF CASH SINCE THIS WOULD CONSTITUTE AN AUGMENTATION OF APPROPRIATIONS MADE BY CONGRESS TO THE AGENCY. SEE 49 COMP.GEN. 572 (1970); 46

ID. 689 (1967; 36 ID. 268 (1956); 2 ID. 775 (1923); AND 26 COMP.DEC. 43 (1919). ANY SUCH DONATIONS OR CONTRIBUTIONS (WHERE THE AGENCY DOES NOT HAVE SPECIFIC STATUTORY AUTHORITY TO RECEIVE THEM) MUST BE DEPOSITED INTO MISCELLANEOUS RECEIPTS OF THE TREASURY, 31 U.S.C. 484 (1970). SEE 49 COMP.GEN. 572 (1970) AND 26 COMP.DEC. (1919).

THE SUBMISSION MENTIONS 5 U.S.C. 4111 (1970), WHICH PROVIDES THAT:

(A) TO THE EXTENT AUTHORIZED BY REGULATION OF THE PRESIDENT, CONTRIBUTIONS AND AWARDS INCIDENT TO TRAINING IN NON-GOVERNMENT FACILITIES, AND PAYMENT OF TRAVEL, SUBSISTENCE, AND OTHER EXPENSES INCIDENT TO ATTENDANCE AT MEETINGS, MAY BE MADE TO AND ACCEPTED BY AN EMPLOYEE, WITHOUT REGARD TO SECTION 209 OF TITLE 18, IF THE CONTRIBUTIONS, AWARDS, AND PAYMENTS ARE MADE BY AN ORGANIZATION DETERMINED BY THE SECRETARY OF THE TREASURY TO BE AN ORGANIZATION DESCRIBED BY SECTION 501(C)(3) OF TITLE 26 WHICH IS EXEMPT FROM TAXATION UNDER SECTION 501(A) OF TITLE 26.

(B) WHEN A CONTRIBUTION, AWARD, OR PAYMENT, IN CASH OR IN KIND, IS MADE TO AN EMPLOYEE FOR TRAVEL, SUBSISTENCE, OR OTHER EXPENSES UNDER SUBSECTION (A) OF THIS SECTION, AN APPROPRIATE REDUCTION, UNDER REGULATIONS OF THE DIRECTOR OF THE BUREAU OF THE BUDGET, SHALL BE MADE FROM PAYMENT BY THE GOVERNMENT TO THE EMPLOYEE FOR TRAVEL, SUBSISTENCE, OR OTHER EXPENSES INCIDENT TO TRAINING IN A NON-GOVERNMENT FACILITY OR TO ATTENDANCE AT A MEETING.

THE ASSISTANT SECRETARY FOR ADMINISTRATION SUGGESTS:

THE PROPOSED PROCEDURE WOULD HAVE THE SAME EFFECT AS DIRECT PAYMENT BY AN ORGANIZATION TO AN EMPLOYEE, SO LONG AS THE SERVICE RETURNS TO ITS APPROPRIATION NO MORE THAN THE AMOUNT OF THE TRAVEL EXPENSES INCURRED BY THE EMPLOYEE. IT SEEMS LOGICAL, THEREFORE, TO HAVE THE ORGANIZATION MAKE ITS PAYMENT TO THE SERVICE INSTEAD OF TO THE EMPLOYEE.

SECTION 4111, SUPRA, PROVIDES A SPECIFIC EXEMPTION TO THE PROHIBITION AGAINST OFFICERS AND EMPLOYEES OF THE EXECUTIVE BRANCH OF GOVERNMENT RECEIVING ANY SALARY, OR ANY CONTRIBUTION TO OR SUPPLEMENTATION OF SALARY, FROM ANY SOURCE OTHER THAN THE GOVERNMENT OF THE UNITED STATES (18 U.S.C. 209). IT ALLOWS AN EMPLOYEE TO ACCEPT FROM ELIGIBLE TAX-EXEMPT ORGANIZATIONS PAYMENT, IN CASH OR IN KIND, TOWARDS SOME OR ALL OF HIS OR HER PERSONAL EXPENSES INCURRED IN THE SCOPE OF THE EMPLOYEE'S OFFICIAL DUTIES WHILE ATTENDING A MEETING. HOWEVER, THIS EXEMPTION IS PERSONAL WITH THE OFFICER OR EMPLOYEE, AND DOES NOT EXTEND TO THE EMPLOYING AGENCY OR DEPARTMENT OF GOVERNMENT. MOREOVER, THE EXEMPTION CANNOT BE READ TO AUTHORIZE THE AGENCY TO ACCEPT VOLUNTARY PAYMENTS FOR THE PURPOSE OF REIMBURSING ITS EMPLOYEES FOR EXPENSES THEY INCUR IN THE ACTIVITIES MENTIONED IN 5 U.S.C. 4111. THAT IS, THE STATUTE IS DIRECTED PRIMARILY AT THE AUTHORITY OF GOVERNMENT EMPLOYEES AND NOT OF GOVERNMENT AGENCIES. THE ABSENCE OF STATUTORY AUTHORITY ALLOWING IT TO ACCEPT AND RETAIN VOLUNTARY CONTRIBUTIONS, AN AGENCY IS BOUND BY THE PROVISIONS OF 31 U.S.C. 484, REQUIRING DEPOSIT IN MISCELLANEOUS RECEIPTS. THEREFORE, THERE IS NO AUTHORITY FOR INTERNAL REVENUE SERVICE'S (IRS) PROPOSAL TO ACCEPT CONTRIBUTIONS DIRECTLY AND USE THE FUNDS TO PAY THE EMPLOYEE'S EXPENSES.

OF COURSE, IF THE GOVERNMENT HAS ALREADY PAID THE EMPLOYEE FOR TRAVEL, SUBSISTENCE OR OTHER EXPENSES INCIDENT TO ATTENDANCE AT A MEETING, AND THEREAFTER CONTRIBUTIONS AUTHORIZED BY 5 U.S.C. 4111(A) ARE RECEIVED BY THE EMPLOYEE, HE IS NOT ENTITLED TO RETAIN ALL THOSE FUNDS. IN THAT CASE, THE

EMPLOYEE MUST REFUND TO THE GOVERNMENT SUCH AMOUNTS AS ARE DETERMINED, PURSUANT TO REGULATIONS PROMULGATED UNDER 5 U.S.C. 4111(B) TO BE ATTRIBUTABLE TO TRAVEL EXPENSES FOR WHICH THE GOVERNMENT IS RESPONSIBLE. THE AMOUNTS REFUNDED BY THE EMPLOYEE TO THE GOVERNMENT ARE PROPERLY FOR CREDIT TO THE APPROPRIATION ORIGINALLY CHARGED. SEE 5 COMP.GEN. 734, 736 (1926).

WHILE IT MAY BE TRUE, AS THE SUBMISSION SUGGESTS, THAT THE PRACTICAL EFFECT OF ADOPTING THE IRS PROPOSAL TO ACCEPT PAYMENTS DIRECTLY FROM THE TAX-EXEMPT ORGANIZATION WILL GENERALLY BE THE SAME AS THE PROCEDURE AUTHORIZED BY 5 U.S.C. 4111(A), QUESTIONS MAY ARISE AS TO THE EMPLOYEE'S ENTITLEMENT TO ANY EXCESS PAYMENTS, OVER THE TRAVEL COSTS, SINCE EVEN IF WE ALLOWED THE AGENCY TO RETAIN SO MUCH OF THE TOTAL PAYMENT AS WAS ATTRIBUTABLE TO THE COSTS OF TRAVEL, THE BALANCE WOULD THEN HAVE TO GO TO MISCELLANEOUS RECEIPTS RATHER THAN TO THE EMPLOYEE. IN ANY CASE, WE CANNOT APPROVE A PROCEDURE WHICH WOULD CONTRAVENE THREE SPECIFIC STATUTORY PROVISIONS, 5 U.S.C. 4111, DISCUSSED SUPRA; 31 U.S.C. 484, REQUIRING DEPOSIT INTO MISCELLANEOUS RECEIPTS WITHOUT DEDUCTION FOR ANY REASON; AND 31 U.S.C. 901, SETTING FORTH THE ONLY CONDITIONS UPON WHICH VOLUNTARY CONTRIBUTIONS TO THE GOVERNMENT MAY BE ACCEPTED, IN THE ABSENCE OF ANOTHER STATUTE TO THE CONTRARY.