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DIGEST: ANNUAL EMPLOYEE TRAVEL EXPENSE LIMITATION CONTAINED IN APPROPRIATIONS TO THE NATIONAL CENTER FOR PRODUCTIVITY AND QUALITY OF WORKING LIFE, PUB. L. NO. 95-81, 91 STAT. 353, IS NOT APPLICABLE TO TRAVEL EXPENSES OF UNCOMPENSATED PRIVATE-SECTOR EXPERTS WHO VOLUNTARILY PARTICIPATED IN MEETINGS SPONSORED BY THAT AGENCY SINCE THEY SERVED ONLY IN A REPRESENTATIVE CAPACITY TO PRESENT THE VIEWS OF THEIR RESPECTIVE FIRM, INDUSTRY OR INTEREST GROUP AND WERE, THEREFORE, NOT GOVERNMENT EMPLOYEES. THE EXPENSES FOR WHICH THESE INDIVIDUALS ARE ENTITLED TO REIMBURSEMENT ARE GOVERNED BY THE PROVISIONS OF 5 U.S.C. 5703 (1976), EVEN THOUGH PERSONS ENGAGED IN INVITATIONAL TRAVEL ARE NOT "EMPLOYEES" FOR THE PURPOSES OF THE APPROPRIATION LIMITATION.

NATIONAL CENTER FOR PRODUCTIVITY AND QUALITY OF WORKING LIFE - TRAVEL REIMBURSEMENT LIMITATION:

THIS DECISION RESPONDS TO AN AUGUST 18, 1978, REQUEST OF MR. GEORGE H. KUPER, EXECUTIVE DIRECTOR, NATIONAL CENTER FOR PRODUCTIVITY AND QUALITY OF WORKING LIFE (CENTER), FOR OUR OPINION AS TO THE APPLICABILITY OF THE PROVISION IN THE TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 1978, PUB. L. NO. 95-81, SECTION 501, 91 STAT. 353 (1977), WHICH LIMITS TRAVEL EXPENDITURES OF EMPLOYEES TO THE AMOUNT OF THE CENTER'S 1978 BUDGET ESTIMATE FOR TRAVEL. MR. KUPER STATES THAT IF THE TRAVEL LIMITATION IS FOUND TO APPLY TO COSTS OF TRAVEL FOR CERTAIN NON- GOVERNMENT EXPERTS, A TECHNICAL VIOLATION OF THE ANTI-DEFICIENCY ACT (31 U.S.C. 665 (1976), WILL HAVE OCCURRED. PENDING OUR DECISION, THE CENTER FORWARDED THE REPORT REQUIRED BY 31 U.S.C. 665(I) IN THE EVENT OF SUCH A VIOLATION TO THE PRESIDENT AND TO THE CONGRESS ON SEPTEMBER 29, 1978. THE CENTER CEASED OPERATION ON SEPTEMBER 30, 1978, BUT WE ARE FORWARDING COPIES OF OUR DECISION TO THE RECIPIENTS OF THAT REPORT.

SPECIFICALLY FOR DETERMINATION IS THE QUESTION OF WHETHER THE SECTION 501 LIMITATION APPLIES TO EXPENDITURES FOR REIMBURSEMENT OF TRAVEL COSTS INCURRED BY CERTAIN EXPERTS FROM THE PRIVATE SECTOR ON LABOR AND MANAGEMENT PROBLEMS, WHO TRAVELLED TO WASHINGTON, D.C. AT THE CENTER'S INVITATION TO ASSIST WITH THE PREPARATION OF ITS "POLICY STATEMENT ON PRODUCTIVITY AND THE QUALITY OF WORKING LIFE." MR. KUPER STATED THAT THE DECISION TO PREPARE SUCH A POLICY STATEMENT WAS MADE AFTER HE WAS ADVISED OF THE PRESIDENT'S DECISION TO CLOSE THE CENTER AND REASSIGN ITS RESPONSIBILITIES BY SEPTEMBER 30, 978.

MR. KUPER STATES THAT THE CENTER'S PROJECTED CLOSING CAUSED AN ACCELERATION OF TRAVEL REQUIREMENTS FOR ITS STAFF MEMBERS, IN ADDITION TO THE UNANTICIPATED REQUIREMENTS FOR TRAVEL BY MANAGEMENT AND LABOR REPRESENTATIVES. IN MAY 1978, THE CENTER BECAME AWARE THAT IF IT CONTINUED TO OBLIGATE TRAVEL FUNDS AT THE

CURRENT RATE, IT WOULD SPEND MORE THAN THE AMOUNT AVAILABLE TO IT FOR EMPLOYEE TRAVEL EXPENSES. THEREFORE, IT REQUESTED THE OFFICE OF MANAGEMENT AND BUDGET (OMB) TO ASK CONGRESS FOR A SUPPLEMENTAL INCREASE IN THE TRAVEL LIMITATION WITHOUT INCREASING THE CENTER'S TOTAL APPROPRIATION. FOR REASONS NOT ENTIRELY CLEAR FROM THE RECORD, OMB DECIDED NOT TO REQUEST AN ADJUSTMENT OF THE CENTER'S TRAVEL LIMITATION. IN ORDER TO AVOID AN ANTI-DEFICIENCY ACT VIOLATION, THE EXECUTIVE DIRECTOR SUGGESTED THAT IT MIGHT BE POSSIBLE TO CHARGE THE EXPERTS' TRAVEL EXPENSES AGAINST FUNDS PROGRAMMED FOR CONTRACTUAL UNDERTAKINGS. HE STATED THAT:

"IN AWARDING CERTAIN FIXED PRICE CONTRACTS WHICH REQUIRE TRAVEL WE DID NOT AWARD FUNDS FOR THE TRAVEL PORTION IN ORDER TO HAVE BETTER CONTROL OVER ACTUAL EXPENDITURES BY ADMINISTERING TRAVEL OURSELVES. SOME OF THESE CONTRACTS REQUIRED THE CONVENING OF NON-GOVERNMENT PROFESSIONALS WHO WERE PROVIDED FUNDS BY INVITATIONAL TRAVEL ORDERS FOR PRIVATE CITIZENS. ACCOUNTING, THEREFORE, ALLOCATED THESE COSTS AGAINST OUR GENERAL TRAVEL ALLOTMENT INSTEAD OF OUR NORMAL CONTRACTUAL ALLOTMENT WHERE IT WAS ORIGINALLY BUDGETED."

ALTHOUGH CENTER OFFICIALS SUPPLIED US WITH COPIES OF SIX CONTRACTS (NP7AC020, SEPTEMBER 30, 1977; NP7AC014, SEPTEMBER 30, 1977; NP7AC012, SEPTEMBER 30, 1977; NP7AC019, JANUARY 25, 1978; NP8AD204, MAY 22, 1978; NP8AC0008, JUNE 1, 1978), THEY DID NOT CITE NOR DID OUR REVIEW OF THESE CONTRACTS DISCLOSE ANY PROVISION WHICH WOULD REQUIRE TRAVEL OR PARTICIPATION IN ANY MEETINGS BY EXPERT REPRESENTATIVES WHO ARE NEITHER GOVERNMENT EMPLOYEES NOR MEMBERS OF THE CONTRACTORS' STAFFS. TWO OF THE CONTRACTS (NP8AD204 AND NP8AC008) DID REQUIRE THE CONTRACTOR TO ASSIST THE CENTER IN SELECTING EXPERTS TO PARTICIPATE IN MEETINGS TO BE ORGANIZED AND CONDUCTED BY THE CONTRACTOR. FURTHER, AS THE EXECUTIVE DIRECTOR STATED, THE TRAVEL EXPENSES OF THE MEETING PARTICIPANTS HERE IN QUESTION WERE REIMBURSED ON THE BASIS OF AN INVITATION FROM THE CENTER ITSELF RATHER THAN ON THE BASIS OF ONE FROM THE CONTRACTOR WHO HAD NO OBLIGATION OR AUTHORITY UNDER THE CONTRACT TO EXTEND SUCH INVITATIONS. THE INVITATIONAL TRAVEL BY MEETING PARTICIPANTS CANNOT BE SAID TO HAVE BEEN PERFORMED PURSUANT TO ANY OF THE ABOVE CONTRACTS AND THEREFORE, IT WOULD BE INAPPROPRIATE TO CHARGE THE INVITATIONAL TRAVEL EXPENSES AGAINST ANY OF THOSE CONTRACTS.

ALTERNATIVELY, THE EXECUTIVE DIRECTOR SUGGESTED THAT BECAUSE THE MEETING PARTICIPANTS WERE NOT GOVERNMENT EMPLOYEES, THE TRAVEL LIMITATION IN THE APPROPRIATION ACT DID NOT APPLY. IN THIS CASE, TRAVEL EXPENDITURES FOR PRIVATE EXPERTS INVITED TO APPEAR AT THE CENTER WOULD BE LIMITED ONLY BY THE UNOBLIGATED BALANCE IN THE CENTER'S ANNUAL APPROPRIATION. IN THIS REGARD, THE EXECUTIVE DIRECTOR STATED:

"SHOULD THE LAW REFER TO EMPLOYEES ONLY WE WILL NOT EXCEED THE LIMITATION. SHOULD IT APPLY TO EMPLOYEES AND INVITATIONAL TRAVEL, CURRENT OBLIGATIONS INDICATE WE WILL EXCEED THE LIMITATION BY SEPTEMBER 30, 1978. IN NEITHER CASE WILL WE EXCEED OUR TOTAL APPROPRIATIONS."

THE TRAVEL EXPENSE LIMITATION CONTAINED IN PUB. L. NO. 95-81, SECTION 501, PROVIDES AS FOLLOWS:

"WHERE APPROPRIATIONS IN THIS ACT ARE EXPENDABLE FOR TRAVEL EXPENSES OF EMPLOYEES AND NO SPECIFIC LIMITATION HAS BEEN PLACED THEREON, THE EXPENDITURES FOR SUCH TRAVEL EXPENSES MAY NOT EXCEED THE AMOUNT SET FORTH THEREFOR IN THE BUDGET ESTIMATES SUBMITTED FOR THE APPROPRIATIONS: PROVIDED, THAT THIS SECTION SHALL NOT APPLY TO TRAVEL PERFORMED BY UNCOMPENSATED OFFICIALS OF LOCAL BOARDS

AND APPEAL BOARDS OF THE SELECTIVE SERVICE SYSTEM; TO TRAVEL PERFORMED DIRECTLY IN CONNECTION WITH CARE AND TREATMENT OF MEDICAL BENEFICIARIES OF THE VETERANS ADMINISTRATION; OR TO PAYMENTS TO INTERAGENCY MOTOR POOLS WHERE SEPARATELY SET FORTH IN THE BUDGET SCHEDULES."

ALTHOUGH THE EXPERTS IN QUESTION WERE NOT INCLUDED IN THE EXEMPTING PROVISO QUOTED ABOVE, WE DO NOT BELIEVE THAT THE OMISSION IS SIGNIFICANT. IN TWO OF THE THREE SITUATIONS COVERED BY THE PROVISO, THE EXPENSES CLEARLY INVOLVE EMPLOYEE TRAVEL WHICH, BUT FOR THE EXEMPTION, WOULD BE SUBJECT TO THE LIMITATION. FOR EXAMPLE, THE PROVISO REFERS TO "OFFICIALS" OF LOCAL AND APPEAL BOARDS IN THE SELECTIVE SERVICE SYSTEM. ALTHOUGH UNCOMPENSATED, THESE OFFICIALS HAVE REGULAR AND RECURRING RESPONSIBILITIES PRESCRIBED BY SELECTIVE SERVICE OFFICIALS AND MAY BE DESCRIBED AS SPECIAL EMPLOYEES. SIMILARLY, THE EXPENSES INCURRED IN OBTAINING MOTOR VEHICLES FROM THE GENERAL SERVICES ADMINISTRATION'S INTERAGENCY MOTOR POOL ARE GENERALLY INCURRED ON BEHALF OF AGENCY OFFICIALS NEEDING TRANSPORTATION IN THE COURSE OF OFFICIAL BUSINESS. THE EXEMPTION FOR VETERANS ADMINISTRATION (VA) BENEFICIARIES TRAVELLING TO OBTAIN MEDICAL TREATMENT DOES NOT, IT IS TRUE, APPLY TO EMPLOYEE TRAVEL. HOWEVER, WE GATHER FROM THE LEGISLATIVE HISTORY (SEE LETTER OF FEBRUARY 3, 1975, FROM REPRESENTATIVE RAY ROBERTS, CHAIRMAN OF THE VETERANS' AFFAIRS COMMITTEE, TO REPRESENTATIVE JACK BROOKS, CHAIRMAN, SUBCOMMITTEE ON GOVERNMENT ACTIVITIES, COMMITTEE ON GOVERNMENT OPERATIONS) THAT OMB HAD DIRECTED AGENCIES SUCH AS THE VA TO ABSORB THE INCREASED COSTS OF BENEFICIARY TRAVEL FROM THEIR REGULAR TRAVEL ALLOWANCES. CHAIRMAN ROBERTS WAS AFRAID THAT UNTIL HIS COMMITTEE SUCCEEDED IN RAISING THE AMOUNTS AVAILABLE FOR BENEFICIARY TRAVEL IN SEPARATE LEGISLATION, BENEFICIARIES IN NEED OF MEDICAL HELP AT SOME DISTANCE FROM THEIR HOMES WOULD SUFFER.

IN A SIMILAR CASE, WHERE THE ANNUAL APPROPRIATION ACT LIMITED FUNDS AVAILABLE TO THE ARCHITECT OF THE CAPITOL FOR EXPENSES OF TRAVEL ON OFFICIAL BUSINESS, WE EXPRESSED THE OPINION THAT:

"THE STATUTORY LIMITATION SHOULD ONLY BE APPLIED TO TRAVEL BY REGULAR OR SPECIAL FEDERAL EMPLOYEES AND THAT TRAVEL BY INDEPENDENT CONSULTING ARCHITECTS OR ENGINEERS ENGAGED BY CONTRACT, NO MATTER HOW THEY ARE PAID, SHOULD NOT BE COUNTED AGAINST THE APPROPRIATION LIMITATION. DETERMINING WHETHER A CONSULTING ARCHITECT OR ENGINEER IS AN INDEPENDENT CONTRACTOR OR IS A SPECIAL GOVERNMENT EMPLOYEE, AND HENCE, THAT HIS OR HER TRAVEL SHOULD BE COUNTED AGAINST THE LIMITATION, CRITERIA SUCH AS THE DEGREE OF SUPERVISION BY OFFICERS OR EMPLOYEES OF THE OFFICE OF THE ARCHITECT OF THE CAPITOL SHOULD BE CONSIDERED." B-145492, FEBRUARY 7, 1978.

UNLIKE THE ARCHITECT'S APPROPRIATION LIMITATION, THE CENTER'S STATUTORY LIMITATION ON TRAVEL EXPENSES APPLIES BY ITS TERMS ONLY TO EMPLOYEE TRAVEL, RATHER THAN TO TRAVEL FOR OFFICIAL BUSINESS. THE STATUS OF THE EXPERTS WHO PARTICIPATED IN THE SERIES OF MEETINGS SPONSORED BY THE CENTER IN CONNECTION WITH THE PREPARATION OF ITS "POLICY STATEMENT ON PRODUCTIVITY AND THE QUALITY OF WORKING LIFE" IS APPARENT FROM THE LANGUAGE OF THE INVITATIONS EXTENDED BY THE CENTER. ONE REPRESENTATIVE INVITATION READ IN PART:

" * * * THE CENTER IS SEEKING TO GAIN THE INPUT OF BOTH THE ACADEMIC AND PRAGMATIC VIEWPOINTS. THE MEETING YOU WILL BE ATTENDING IS ONE OF A SERIES WHERE THE CENTER HAS INVITED EITHER AUTHORS OF IMPORTANT RESEARCH ON TECHNOLOGICAL INNOVATION OR SENIOR INDUSTRIAL EXECUTIVES EXPERIENCED IN THE ENCOURAGEMENT OF INNOVATION.

"YOUR AGREEMENT TO ATTEND THIS MEETING IS MOST APPRECIATED. I LOOK FORWARD TO THE OPPORTUNITY OF MEETING YOU AND LEARNING OF YOUR OPINIONS ON THIS IMPORTANT TOPIC.

"THE CENTER WILL BE GLAD TO REIMBURSE YOUR EXPENSES RELATED TO THIS MEETING, SUBJECT TO GOVERNMENT TRAVEL REGULATIONS. THE TRAVEL FORMS WILL BE AVAILABLE AT THE MEETING."

CENTER OFFICIALS ALSO INFORMALLY ADVISED US THAT ALTHOUGH THE MEETING PARTICIPANTS WERE REIMBURSED FOR TRAVEL EXPENSES, THEY WERE OTHERWISE UNCOMPENSATED. THE EXPERTS WERE NOT SUBJECT TO THE SUPERVISION OF CENTER OFFICIALS AND WERE INVITED TO APPEAR AT THE CENTER ONLY IN A REPRESENTATIVE CAPACITY TO SPEAK FOR THEMSELVES OR THEIR RESPECTIVE FIRMS, INDUSTRIES OR INTEREST GROUPS RATHER THAN AS SPECIAL EMPLOYEES. RECOGNIZE THAT AN INDIVIDUAL SERVING IN THE GOVERNMENT SERVICE WITHOUT PAY OR AT $1 A YEAR IS INCLUDED WITHIN THE DEFINITION OF THE TERM "EMPLOYEE" CONTAINED IN SECTION 2 OF THE TRAVEL EXPENSE AMENDMENTS ACT OF 1975, PUB. L. NO. 94-22, 89 STAT. 84 (CODIFIED AT 5 U.S.C. 5703 (1976)), THE AUTHORITY UNDER WHICH THE TRAVEL EXPENSES WERE REIMBURSED. WE HAVE FOUND NOTHING IN THE AMENDMENTS' LEGISLATIVE HISTORY, HOWEVER, TO INDICATE THAT CONGRESS INTENDED SUCH AN EXPANDED DEFINITION OF "EMPLOYEE" TO BE USED FOR DETERMINING THE AVAILABILITY OF FUNDS APPROPRIATED FOR EMPLOYEE EXPENSES. THE PURPOSE OF INCLUDING UNCOMPENSATED EXPERTS WITHIN THE DEFINITION WAS SIMPLY TO INSURE THAT ALL PERSONS (WHETHER OR NOT THEY WERE EMPLOYEES) TRAVELLING AT GOVERNMENT EXPENSE WOULD BE ENTITLED TO THE SAME ALLOWANCES AND BENEFITS. SEE H. REP. NO. 104, 94TH CONG., 1ST SESS. 8 (1975).

INASMUCH AS FEDERAL CONFLICT OF INTEREST LAWS APPLY TO CERTAIN EXPERTS OR CONSULTANTS WHO ARE CLASSIFIED "SPECIAL GOVERNMENT EMPLOYEES," IT IS NECESSARY OCCASIONALLY TO DISTINGUISH BETWEEN CONSULTANTS AND ADVISORS WHO ARE EMPLOYEES AND PERSONS WHO ARE INVITED TO APPEAR AT AN AGENCY TO GIVE THEIR VIEWS OR THOSE OF AN IDENTIFIED GROUP IN A REPRESENTATIVE CAPACITY. IN THAT CONTEXT, THE FEDERAL PERSONNEL MANUAL, CH. 735, APP. C (1969 ED. JULY 1969) STATES THAT:

" * * * ONE WHO IS REQUESTED TO APPEAR BEFORE A GOVERNMENT AGENCY TO PRESENT THE VIEWS OF A NONGOVERNMENTAL ORGANIZATION OR GROUP WHICH HE REPRESENTS OR FOR WHICH HE IS IN A POSITION TO SPEAK, DOES NOT ACT AS A SERVANT OF THE GOVERNMENT AND IS NOT ITS OFFICER OR EMPLOYEE. HE IS THEREFORE NOT SUBJECT TO THE CONFLICT OF INTEREST LAWS * * * ."

IN OUR VIEW THE INDIVIDUALS INVITED TO PARTICIPATE AT CENTER MEETINGS ARE SIMILARLY NOT FEDERAL EMPLOYEES WHOSE TRAVEL EXPENSES ARE CHARGEABLE AGAINST STATUTORY LIMITATIONS ON EMPLOYEE TRAVEL. ACCORDINGLY, WE CONCLUDE THAT IF BY SUBTRACTING THE SUM OF OBLIGATIONS FOR TRAVEL REIMBURSEMENT TO SUCH NON-GOVERNMENT EXPERTS FROM THE SUM OF THE CENTER'S TOTAL FISCAL YEAR 1978 OBLIGATIONS FOR EMPLOYEE TRAVEL, THE AMOUNT REMAINING DOES NOT EXCEED THE 1978 BUDGET ESTIMATE FOR TRAVEL, THE ANTI- DEFICIENCY ACT WAS NOT VIOLATED.