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Panama Canal Commission - Frequent Flyer Benefits - Commingling of Accounts

Number: B-257525

Date: 1994-11-30

Matter of: Panama Canal Commission - Frequent Flyer Benefits - Commingling of Accounts File: B-257525 Date: November 30, 1994

Self-sustaining status of Panama Canal Commission does not provide basis for exception to long-standing rule that a federal employee is required to account for any gift, gratuity, or benefit received from a private source incident to the performance of official duty. Therefore, any payments or benefits tendered to the Commission's employees are viewed as having been received on behalf of the government. Bonus coupons, tickets, and credits received by Commission's employees as a result of travel paid for by the Commission from its revolving fund are the property of the government and must be turned in to the appropriate agency official. Employees who participate in a frequent flyer program should maintain separate accounts for personal travel and official travel if permitted by the airline. If, however, the airline permits only one account per customer, the employee does not forfeit the right to use personal credits for personal travel, provided that the employee keeps adequate records which clearly separate personal travel from official travel so that the employee can clearly document that the credits used for personal travel were earned on personal travel and not on official travel.

DECISION

This decision is in response to a request from the Administrator, Panama Canal Commission, concerning the use of frequent flyer program credits by employees of the Panama Canal Commission. The issue presented is whether the total mileage credits in the mixed frequent flyer accounts[1] of employees of the Panama Canal Commission become the sole property of the Commission. For the reasons that follow, Commission employees who use mileage credits obtained through official travel for their personal travel are liable for the full value of the benefits used. Employees can maintain a mixed account for mileage credits without forfeiting their right to use their personal credits, provided adequate records are kept clearly differentiating between credits earned on personal travel and credits earned on official travel.

BACKGROUND

The questions we are considering arose because of a report issued by the Commission's Inspector General which determined that a number of current and former Commission employees used bonus credits that were earned through both personal and official government travel for their personal use. The Administrator states that he is aware of the well-settled rule that a federal employee is required to account for any gift, gratuity, or benefit received from a private source incident to the performance of official duty, and that any

payments tendered to the employee are viewed as having been received on behalf of the government. The Administrator cites John D. McLaurin, 63 Comp.Gen. 233 (1984), holding that promotional gifts received pursuant to official travel are the property of the government, and that, if an employee uses mileage credits earned through both personal and official travel, he or she is liable for their full value. See, also, Discount Coupons, 63 Comp.Gen. 229 (1984); Federal Travel Regulation (FTR), 41 C.F.R. Sec. 301-1.103(f)(1) (1993).

The Administrator requests that, at least as to the Panama Canal Commission, the McLaurin rule be reexamined in view of the fiscal structure of the Commission and its traditional policy of encouraging employees based in Panama to plan their leave in the United States to coincide with official travel there.

In particular, the Administrator states that the Canal enterprise is wholly self-sustaining, i.e., it must operate entirely from revenues which it generates and at no cost to the American taxpayer. The Panama Canal Act was amended in 1988 to convert the Commission from an appropriated fund agency to one which operates from a revolving fund, but the Administrator states that the self-sustaining concept remains in effect. See, 22 U.S.C. Sec. 3712 (1988). Because of its self-sustaining status, the Administrator believes that the general rules pertaining to the prohibition against personal use of bonus mileage credits should have no application to the Commission.

Coupled with the foregoing, the Administrator also refers to the Commission's long-standing policy of encouraging its employees to schedule leave in the United States in conjunction with official travel. He explains that fewer than 700 of the Commission's 7400 permanent employees have rights to home leave travel every year or every 2 years. In order to keep the cost of home leave travel as low as possible, eligible U.S. citizens are encouraged to schedule their home leave in conjunction with training or other official travel to the United States. While they are on home leave or other official travel, many employees travel by air at their own expense to various locations within the United States. Consequently, virtually all of those employees who participate in frequent flyer programs have mixed accounts, i.e., accounts in which personal miles and official miles are commingled. The Administrator has furnished us with several examples of mixed accounts and their personal use as follows:

Examples of Personal Use of Frequent-Flyer Mileage Points in Mixed Accounts

EXAM- DATE PERSONAL GOVERN- WITHDRAWAL USE PLES MILES MENT FOR MILES PERSONAL USE

A February 1986 29,502 165,815 15,000 Marriott Hotel Vacation Plan

B February 1988 34,752 271,948 25,000 1 Coach Class ticket: U.S.-Central America

C July 1989 20,758 351,793 35,000 1 Coach Class ticket: U.S.-Central America

D January 1991 102,080 77,289 170,000 2 First Class tickets: U.S.-South Pacific

The Administrator is concerned that under the McLaurin rule all of the mileage accumulated in those mixed accounts may be considered government property. He submits that such a result would be unwarranted and that the application of the rule to Commission employees is unduly harsh and counterproductive to U.S. interests.

OPINION

While the Commission is financially self-sustaining, the rules governing expenditures of appropriated funds generally apply to the Commission. The Commission's receipts are paid into a revolving fund in accordance with 22 U.S.C. Sec. 3712 (1988). Revolving funds, including that of the Panama Canal Commission, are appropriated funds and the legal principles governing appropriations also apply to revolving funds. Edgar T. Callahan, 63 Comp.Gen. 31 (1983); 35 Comp.Gen. 436 (1956); B-204078.2, May 6, 1988. Thus, bonus coupons, tickets, and credits received by a Commission employee as a result of trips paid for, in whole or in part, by Commission funds are the property of the Commission. Michael Farbman, et al., 67 Comp.Gen. 79 (1987); Department of Energy, B-233388, Mar. 23, 1990; Presidential Exchange Executives, B-238759, Apr. 13, 1990.

Moreover, in our view, the need for Commission employees to return periodically to the United States for business and leave does not provide a reasonable basis for an exception to the basic rule. There are many similarly situated agencies whose employees travel frequently both inside and outside the continental United States. Since the official travel expenses of the Panama Canal Commission's employees are paid for out of appropriated funds, these employees may not personally retain and use the frequent flyer mileage credits received as a result of official travel.

We recognize that many airlines permit their customers to maintain only one frequent flyer account[2] and that employees are concerned that they may lose the benefit of credits earned from personal travel once those credits are commingled with those earned from official travel. If adequate records clearly distinguish mileage credits earned on personal travel from those obtained through official travel, we know of no reason why employees are not free to make use of those personal mileage credits.[3] Of course, employees who participate in a frequent flyer program should maintain separate accounts for personal travel and official travel if permitted by the airline.[4] If, however, the airline permits only one account per customer, the employee does not forfeit the right to use personal credits, provided that the employee retains account records and supporting documentation which establish the credits attributable to personal travel and official travel, respectively. The burden of proof is on the employee to show that credits used for personal reasons do not exceed those earned through personal travel. The employees in Examples A and B above[5] who used only personal mileage credits for personal travel would not be liable to the Commission if they can produce records which establish that they earned those credits on personal trips.

This decision does not change the basic principle that official mileage credits may only be used for official business, as established by our prior decisions in Michael Farbman, et al.; John D. McLaurin; Department of Energy, supra; and similar decisions. Therefore, the employees in Examples C and D, who used government credits for their personal travel, are liable for the full value of the benefits used.

1. Mixed frequent flyer accounts consist of bonus mileage points or credits earned through both personal and official government travel.

2. Our most recent information is that only four airlines allow members to have separate accounts, namely Alaska Airlines, Northwest, TWA, and USAIR. Also,

Continental Airlines allows only one account, but permits business and personal travel to be separately recorded.

3. We also recognize that employees may earn mileage credits by using certain credit cards for personal purchases or by other means. The same rule applies to these credits, i.e., the employee may keep those credits for personal use if he or she has adequate records to show that they were derived from personal funds.

4. The provision in the FTR, 41 C.F.R. Sec. 301-1.103(f)(1) (1993), which provides that employees should maintain separate frequent traveler accounts, is not applicable where the airline does not permit separate accounts.

5. See chart, above.