IRB No. 2022-12
March 21, 2022

ACTION ON DECISION

Subject: CSX Corp. v. United States,
18 F.4th 672 (11th Cir. 2021)

Issue: Whether relocation benefits payments that are made to or for the benefit of employees and are not excluded from the Railroad Retirement Taxation Act ("RRTA") under § 3231(e)(5) of the Internal Revenue Code (the "Code") are excludable from compensation for purposes of RRTA under § 3231(e)(1)(iii).

Discussion: In the case at issue, CSX Corporation and its various subsidiaries sought to recover both the employer and employee portions of RRTA taxes paid on certain relocation benefits to move and relocate employees and their families to various business locations. CSX paid some relocation benefits directly to employees and provided other relocation benefits through third party service providers. On its tax return for the year at issue, CSX treated some of the relocation benefits as excludable from RRTA taxation under § 3231(e)(5).[1] CSX later filed a refund claim, asserting that additional relocation and relocation-related benefits were also excluded from the RRTA taxation as traveling or other bona fide and necessary expenses incurred or reasonably expected to be incurred in its business under § 3231(e)(1)(iii).[2]

The Eleventh Circuit addressed an issue that was not resolved in its prior opinion:[3] "whether the [relocation] expenses were incurred in CSX's business." CSX, 18 F.4th at 678. The court affirmed the summary judgment that the relocation expenses were exempt under § 3231(e)(1)(iii).[4] Id. at 685.

[1] Section 3231(e)(5) excludes from compensation subject to RRTA taxation:

> any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 108(f)(4), 117, or 132.

[2] Section 3231(e)(1)(iii) excludes from compensation subject to RRTA taxation:

> an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred or reasonably expected to be incurred in the business of the employer provided any such payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment.

[3] CSX Corp. v. United States, 909 F.3d 366 (11th Cir. 2018).

[4] The Eleventh Circuit discussed and disagreed with the Fifth Circuit's interpretation of § 3231(e)(1)(iii) in a similar case, BNSF Railway Co. v. United States, 775 F.3d 743 (5th Cir. 2015). CSX, 18 F.4th at 682-

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We disagree with the Eleventh Circuit's reasoning and conclusion.

Purporting to interpret the plain and ordinary meaning of the statute, the Eleventh Circuit rejected the Government's argument that the expenses at issue were not incurred in the business of the employer because they were personal expenses, explaining that under some circumstances an expense may lose its character as a personal expense and take on the color of a business expense.[5] Id. at 679, citing Wisconsin Central Ltd, 138 S.Ct. 2067, 2070 (2018) and Sibla v. Commissioner, 611 F.2d 1260, 1262 (9th Cir. 1980). Instead, the court reasoned that the expenses were incurred by employees in the business of the employer because the expenses were (1) incurred by the employee at the direction of the employer and (2) incurring such expenses was required in order for the employee to perform services for the employer. Id. We disagree that meeting one or both of these conditions causes a payment to an employee that would otherwise be compensation to be treated as a payment for a bona fide and necessary expense that the employee incurred or was reasonably expected to incur in the business of the employer for purposes of § 3231(e)(1)(iii).

Although we disagree with the decision of the Eleventh Circuit in CSX with respect to the scope of the exclusion from RRTA taxation under § 3231(e)(1)(iii), we recognize the precedential effect of the decision to cases appealable to the Eleventh Circuit and will follow it for cases within the Eleventh Circuit in which facts are not materially distinguishable. We do not, however, acquiesce to the opinion and will continue to litigate the scope of the exclusion from compensation under § 3231(e)(1)(iii) in cases appealable in other circuits.

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[5] The Eleventh Circuit acknowledged that § 162(a) of the Code has been interpreted by the Secretary of the Treasury to disallow the moving expenses at issue under § 162 or § 217 of the Code. See CSX, 18 F.4th at 680, 683.

Recommendation: Nonacquiescence.

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