

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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AKJKiss - WTA-N-110574-98

date: JUL 29 1998

to: Travel Ombudsman/Chief
Office of Travel Management & Relocation

from: Assistant Chief Counsel (Income Tax & Accounting)

subject: Indirect Reimbursement of Nonqualified Moving Expenses

This responds to your memorandum dated April 30, 1998, concerning a payment made by the Internal Revenue Service to a third party (a moving or storage company) for the expenses of storing household goods for more than 30 days in connection with the relocation of the [REDACTED] Service Center.

Your position is that the expenses would not be deductible as moving expenses under § 217 of the Internal Revenue Code, that the payment is thus not excludible from gross income under § 132, and that the payment to the third party for the expenses results in gross income to [REDACTED], on whose behalf the payment was made.

Our understanding is that [REDACTED] concedes that if he had been reimbursed directly for storage expenses he incurred out-of-pocket, the reimbursement would have resulted in gross income to him. However, [REDACTED] contends that since the IRS paid the third party, he did not receive the payment "personally or directly." He also questions whether he received any benefit since the move was in the interest of the government. Thus, he disagrees with your conclusion that the payment to the third party resulted in gross income to him.

Specifically, the question you pose to our office is whether the IRS acts correctly when it includes in an employee's gross income the amount it pays to a third party for the employee's moving or storage expenses that are not qualified. We are providing the following general information that we hope will be helpful to you in responding further to the Director.

Section 82 of the Internal Revenue Code generally provides that there shall be included in gross income (as compensation for services) any amount received, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one residence to another residence that is attributable to employment or self-employment, except as provided in § 132(a)(6), relating to a qualified moving expense

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reimbursement. Section 132(a)(6), in conjunction with § 132(g), provides an exclusion for moving expenses that would be deductible under § 217.

Section 1.82-1(a)(3) of the Income Tax Regulations provides that amounts are considered received whether received directly (e.g., a payment from the employer to the employee as a reimbursement of an employee-paid expense) or indirectly (e.g., a service provided by a third party and paid for by the employer).¹ Of particular noteworthiness, the regulation states:

Thus, if an employer pays a mover for the expenses of moving an employee's household goods and personal effects from one residence to another residence, the employee has indirectly received a payment which is includible in his gross income under section 82.

Section 1.82-1(a)(5) provides that any amount received from an employer in connection with the performance of services for the employer is attributable to employment.

Thus, in a situation in which the exclusion provided by § 132(a)(6) does not apply, (i.e., concededly, the expenses are not moving expenses that would be deductible under § 217 if directly paid by the employee), it is clear that the employee indirectly receives a payment attributable to employment. The IRS acts correctly in including the payment in the employee's gross income under § 82.

We hope that this memorandum adequately responds to your request. You have not raised, nor have we considered, any other potential issues. If we can be of further assistance, please contact A. Kathie Jacob Kiss of this office. Ms. Kiss can be reached at (202) 622-4920.

By (signed) Robert A. Berkovsky
Robert A. Berkovsky
Chief, Branch 2

¹ The concept that it is immaterial to the tax consequences whether an employer's payment is made directly to the employee or to another on the employee's behalf is of long-standing duration.

See Old Colony Trust Co. v. Commissioner, 279 U.S. 716 (1929),
VIII-2 C.B. 222.

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