



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Fort Polk Employees—Erroneous Payment of
Compensation—Amounts Withheld for Federal and State
Taxes—Waiver

File: B-261699

Date: October 25, 1996

DIGEST

1. An agency asks whether the gross amount of an overpayment of pay must be used to determine those cases that come within its \$1,500 waiver authority, when the agency intends to consider waiving only a specific amount less than \$1,500. The waiver statute, at 5 U.S.C. § 5584(a)(2)(A) (1994), limits the waiver authority of an agency head to claims "in an amount aggregating not more than \$1,500." The term "aggregate amount" is defined in 4 C.F.R. § 91.2(j) (1996) to mean "the gross amount of the claim against the employee . . ." Therefore, an agency head may grant waiver only where the gross amount of an employee's debt before deductions is \$1,500, or less.

2. Each of a group of employees received a single overpayment of compensation. Because the administrative error occurred at the end of the calendar year, the agency was unable to correct the error during the year and had to report it as income for the year on the employee's W-2 statement and withhold monies for income taxes. The employees were notified and were required to repay the gross amount of the overpayment, but recoupment did not occur until the following year. However, due to their individual income tax circumstances, most of them were unable to recover from the taxing authorities the amount withheld for income taxes on the overpayment. The agency asks whether the amount withheld for income taxes may be waived because it is unrecoverable. The application of the tax laws to an individual's income is a matter solely within the jurisdiction of the taxing authority, and an individual's income tax liability on the overpayment does not permit partial waiver of a debt not otherwise appropriate for waiver.

DECISION

This responds to a request for decision from the Director, Defense Finance and Accounting Service (Arlington, VA) (DFAS).¹ The agency has submitted for waiver consideration the cases of seven civilian employees whose debts arose due to a single erroneous payment to each, in amounts ranging from approximately \$1,550 to \$2,000.² In conjunction with those cases and others, DFAS asks whether it is appropriate to waive part of an employee's debt to the United States that is represented by the amount withheld from that payment for income taxes where the employee is required to repay the debt, but is unable to obtain a refund of the amount withheld for those taxes. We conclude that it is not appropriate to waive part of a debt represented by income tax withholding, and partial waiver is denied in the seven cases presented here for consideration.

BACKGROUND

The DFAS report states that the Defense Accounting Office, Pensacola, encountered problems with its civilian pay system for the pay period ending December 10, 1994 (the last pay period for calendar year 1994 for income tax purposes). The problem was discovered on December 15, 1994, and pay processing was stopped. Corrections were made to the appropriate data base and final processing of pay was run on December 18, 1994. In spite of that effort, each of 306 civilian employees at Fort Polk, Louisiana, received single erroneous payments of salary during the period of December 20–22, 1994.³ Because of the time constraints associated with the approaching end of the calendar year, the Pensacola office focused its efforts on adjusting large-dollar overpayments in cases which could be readily corrected. This involved pay transactions by electronic fund transfers for 18 employees whose overpayments exceeded \$2,000 each. However, this effort resulted in the 288 other employees to be treated differently because they received the overpayments by check and the Pensacola office was unable to correct the problem before the end of the calendar year.⁴ As a result, W-2 forms had to be issued to each of these 288

¹Mr. Richard F. Keevey

²The employees are: David A. Armbruster; Arnold E. Brewer; Ida J. Lester; Thomas J. Poche; Dale E. Richmond; Bobbi Jo Stark; and Jani C. Whitty.

³The range of debts for all 306 employees is \$8.91 to \$10,431.58.

⁴According to agency records, DAO Pensacola received calls from approximately 50 percent of the affected employees during the period December 21 - 30, 1994, advising the agency that they had been overpaid.

employees for calendar year 1994 showing the overpayments as taxable income for that year.

Recovery of the gross overpayment to each of these employees was completed during calendar year 1995. Under Department of the Treasury regulations, any withholding errors which occur are to be settled by the employee filing a tax return. When erroneous payments are recovered during a calendar year following the year in which the erroneous payments were made, such repayment is reportable on that following year's income tax return, thus permitting those affected individuals to recover the income taxes paid on the erroneous payments.

The DFAS states that, under authority of 26 U.S.C. § 1341 (1994), individuals whose overpayments exceeded \$3,000 might be made whole by claiming the repayment as a credit or deduction on their 1995 income tax return. However, DFAS points out that only 2 of the 288 employees fell into this category, that the only remedy available to those whose overpayments were less than \$3,000 is reporting of the repayment as a miscellaneous deduction on Schedule A of the Federal return, subject to a 2 percent of adjusted gross income threshold, and that many of these employees would not be able to meet the threshold. As a result, DFAS believes that many of the 288 affected individuals will not be able to recover the amounts withheld for income taxes on the overpayments that had to be reported as income for calendar year 1994. Thus, the question is whether that portion of the debt due the United States represented by the amount withheld for income taxes may be waived because it is unrecoverable.

As an ancillary issue, DFAS asks what constitutes the amount of a debt for purposes of applying the agency's waiver threshold. The DFAS states that this Office has not rendered a decision on the question as to whether the gross amount of an overpayment must be used in determining an agency's waiver authority when the agency intends only to consider waiver of the amounts withheld for income taxes. The DFAS states that such amounts would be within the agency's \$1,500 waiver authority in all 288 cases.

OPINION

Section 5584(a) of title 5, United States Code (1994), provides that where collection of an overpayment "would be against equity and good conscience and not in the best interest of the United States," it may be waived in whole or in part. However, section 5584(b) thereof, precludes the Comptroller General or the head of an agency from exercising waiver authority in any case where there is an indication of fraud, misrepresentation, fault, or lack of good faith on the part of any person having an interest in obtaining waiver of the debt. As those provisions relate to heads of agencies, section 5584(a)(2)(A) provides that the maximum amount of debt in each

case that may be considered for waiver "is in an amount aggregating not more than \$1,500."

Under the authority granted to the Comptroller General to prescribe standards for waiver,⁵ the term "aggregate amount," as used in the waiver provisions, is defined in 4 C.F.R. § 91.2(j) (1996) to mean "the gross amount of the claim against the employee . . . from whom collection is sought." Under the definition, the term "aggregate amount" means the entire amount of the overpayment found due, before any repayment is made and without reduction for any required withholdings.⁶

Erroneous payments usually arise as a result of mistakes by those who are charged with the administrative responsibility for making the payments. Such is the situation described in the submission. However, where the payment made is in excess of the amount authorized to be paid, the government has the right to recover the excess amount. We have held that an employee who knows or should know that he or she may have received an overpayment should be prepared to return that overpayment, and collection would not be against equity or good conscience.⁷

However, the DFAS raises the issue of whether that part of an employee's debt represented by unrecoverable amounts withheld for income taxes may be waived. The waiver request is expressly limited to those amounts withheld for federal and state income taxes.

On this issue, we have held that application of the tax laws to an individual's income is a matter solely within the jurisdiction of the taxing authority.⁸ In this regard, we note that an individual's tax liability in any given year is solely dependent upon his own situation that year, and the amount withheld from an overpayment of compensation for income tax purposes is based on his individual W-4 declaration of exemptions. Therefore, considering the many possible tax liability variables that may apply in individual cases, we do not believe that the

⁵5 U.S.C. § 5584(a)(2)(C) (1994).

⁶Charles R. Ryon, Sr., B-234731, June 19, 1989; B-183430, Nov. 28, 1975, and decisions cited.

⁷Hawley E. Thomas, B-227322, Sept. 19, 1988; Dr. Joella Campbell, B-259660, June 8, 1994.

⁸Richard C. Clough, 68 Comp. Gen. 326 (1989); B-168031, June 26, 1970; Saburo Nishikawa, B-190531, Apr. 3, 1978; Herbert R. Frye, B-195472, Feb. 1, 1980; Mark F. Jones, B-202136, July 20, 1981; and Charles R. Ryon, Sr., B-234731, *supra*.

individual income tax consequences permit partial waiver of a debt that does not otherwise meet the requirements for waiver.⁹

Accordingly, as the foregoing relates to the seven cases submitted here for consideration, partial waiver of their debts represented by the amount withheld for income taxes on the overpayments received is denied.

/s/Seymour Efras
for Robert P. Murphy
General Counsel

⁹Richard C. Clough, 68 Comp. Gen. 326, supra.