

August 23, 1985

Koll

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION Bureau of Apprentices- ship and Training Washington, D.C. 20213 Symbols: TDT/MMW	Distribution: A-539 All Tech. Hdqtrs. A-542 RD A-544 All Field Techs.	SUBJECT: CODE: 902 Promotional benefits received by Government Employees on Official Travel ACTION: Due date:
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PURPOSE: To inform the field staff of recent Comptroller General decisions concerning various promotional programs and the restrictions which apply to Government employees while on official travel status and to transmit copies of Edward Sienkiewicz's Travel Bulletin No. 85-12, together with Decisions of the Comptroller General.

BACKGROUND: The attached Travel Bulletin was prepared in response to a recent review of travel policies by the Office of Program and Fiscal Integrity with regard to the restrictions on personal use of promotional awards as a result of official travel.

The decisions by the Comptroller General are summarized below:

1. The general rule is that a Federal employee is obligated to account for any gift, gratuity or benefit received from private sources incident to the performance of official duty. This rule applies to situations where an employee enters a promotional program sponsored by an airline, hotel, charge card company, or other organization and receives a discount or future bonus arrangement as a result of entering that promotional program.
2. A bonus ticket received by an employee as a result of trips paid by both appropriated funds while on official travel and personal funds, is the property of the Government and must be turned in to the appropriate official of the Government. If employee wishes to participate in the bonus program and retain the benefits from the program, he should make certain that all trips included in the bonus program are paid from personal funds and does not involve any official travel.
3. An employee who enters a promotional program sponsored by airlines which includes free upgrade of service to first class, membership in clubs, and check-cashing privileges, does not have to turn in such benefits to the Government. The Government is unable to use such benefits, and there is no reason for employee not to use such benefits.
4. A discount for future travel received by employee while on official travel, which is either non-transferable or carries an expiration date, still is property of the Government and should not be given back to the employee for personal use even if it appears that the Government may have no use for the discount.

ACTION: BAT Regional Directors are asked to advise their field staff of the need to fully comply with the requirements detailed in the attached copies of Comptroller General Decisions.

Attachment

U.S. Department of Labor

Employment and Training Administration
601 D Street, N.W.
Washington, D C 20213



August 6, 1985

TRAVEL BULLETIN NO. 85 - 12

FROM:

Edward Sienkiewicz
EDWARD SIENKIEWICZ
Chief, Administrative Services

SUBJECT:

Comptroller General Decisions
Concerning Various Promotional
Programs and the Restrictions
Which Apply to Employees on
Official Travel Status

This Travel Bulletin is in response to a recent review of travel policies performed by the Office of Program and Fiscal Intergrity, concerning the above referenced subject. Attached are four Comptroller General Decisions which will enable travelers to better understand the restrictions concerning the personal use of promotional awards, bonus flights, gifts or gratuities which apply as a result of official travel. It is essential that all travelers fully comply with the requirements spelled out in the attached Comptroller General Decisions.

Attachments

126072

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-215826

DATE: January 23, 1985

MATTER OF: Johnny Clark--Use of Bonus Lodging Points
Earned Under Travel Promotion Program

DIGEST:

An employee asks whether he may make personal use of non-transferable bonus lodging points earned as a result of a combination of Government-funded and personal travel. Any travel promotional materials received as a result of the expenditure of Federal funds are the property of the Government and must be relinquished to an appropriate agency official. Since the bonus lodging points here were earned in part by Government-funded travel, the employee may not make personal use of them.

The Director, General Services and Controller, General Accounting Office (GAO), requests a decision whether Mr. Johnny Clark, an employee of GAO, may make personal use of non-transferable bonus lodging points earned in the Holiday Inn Priority Club Program as a result of a combination of Government-funded and personal travel. For the reasons set forth below, we conclude that he may not.

Under the terms of the Holiday Inn promotional program, points are earned for using Holiday Inn accommodations. Awards and prizes are based on the number of points accumulated, similar to the Frequent-Flyer mileage programs offered by airlines. See Discount Coupons and Other Benefits Received in the Course of Official Travel, B-210717, February 24, 1984, 63 Comp. Gen. 229. Mr. Clark notes that some of the points he earned involved personal travel and most of the points were earned prior to our decision in Discount Coupons, cited above. He questions whether this decision applies to the Holiday Inn promotional program.

We held in Discount Coupons, cited above, that promotional gifts such as those attributed to airline Frequent-Flyer programs are the property of the Government, and employees may not retain any gift or gratuity received in the course of official travel. This applies to bonuses

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or promotional awards obtained through a combination of appropriated and personal funds. Discount Coupons, 63 Comp. Gen. 229, at 232, and Abraham Frycman, B-212559, February 24, 1984.

Since the bonus points accumulated by Mr. Clark were acquired in part through the use of Federal funds, any awards or benefits which accrue to this program are the property of the United States and must be relinquished to an appropriate agency official. See Federal Travel Regulations (FTR), para. 1-1.6b (Supp. 9, 49 Fed. Reg. 20372, 20374, May 14, 1984), incorp. by ref., 41 C.F.R. § 101-7.003 (1984).

Mr. Clark questions whether the bonus lodging points may be used since some of the points were earned before issuance of our decisions in February 1984. Our decisions were not prospective in application. See John D. McLaurin, B-212236, February 24, 1984, 63 Comp. Gen. 233. In that decision, we permitted Mr. McLaurin, who had used his promotional material prior to issuance of guidance by the General Services Administration^{1/} or our decisions, to reduce his liability by the percentage of private travel used to obtain the award. McLaurin, 63 Comp. Gen. 233, at 235. We also stated that any future use of promotional material would result in liability for the full value of the bonuses or promotional gifts used. Thus, since Mr. Clark contemplates use of the bonus lodging points after the date of the GSA guidance and our decisions, such use would be prohibited.

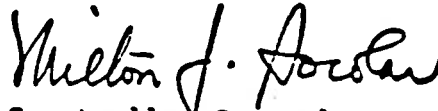
Finally, the fact that these bonus lodging points are non-transferable, while perhaps limiting their value to the Government, is of no consequence. Even if the Government is unable to use the promotional materials after every reasonable attempt, the promotional materials may not be utilized by the employee for personal use. Discount Coupons, cited

^{1/} Federal Property Management Regulation § 101-25.103, 48 Fed. Reg. 48231, October 18, 1983.

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above. The bonus is the property of the Government, and the employee who received the promotional materials has no more legal right to them than any other person.

Therefore, we conclude that Mr. Clark may not make personal use of these bonus lodging points. They are the property of the Government and they should be relinquished to an appropriate agency official.



For

Comptroller General
of the United States

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-212236

DATE: February 24, 1964

MATTER OF: John D. McLaurin - Promotional Gifts
Received as a Result of Official Travel

DIGEST:

An employee received and used a bonus ticket and a free hotel room for personal travel as a result of trips paid by both personal funds and Government funds. Such promotional gifts which were received because of travel paid by Government funds belong to the Government. The employee must pay the full value of the tickets and benefits received to the Government. Since this employee used these gifts prior to the issuance of guidance on the use of such materials, he may reduce his liability for repayment based on the percentage of travel paid by personal funds. Any future use of promotional gifts will result in liability for the full value of the bonus or gift. See B-210717, dated today.

Mr. Richard Mulberry, Inspector General, Department of the Interior, has requested a decision concerning a travel bonus consisting of two free first-class round-trip tickets and four free nights at a hotel received by an Interior employee, Mr. John D. McLaurin. The travel bonus was awarded by United Airlines under their Mileage Plus program and the mileage accumulated by Mr. McLaurin was primarily as a result of official travel. The first issue presented is whether Mr. McLaurin should reimburse the Government for the value of the bonus awards. The second issue is, assuming the Government is to be reimbursed, should the reimbursement be limited to reflect the percentage of private travel versus official travel used to obtain the award. We hold that Mr. McLaurin must reimburse the Government for the bonus awards based on the percentage of official travel used to obtain the award.

Mr. McLaurin registered in the United Airlines Mileage Plus program in October 1961. By February 1963, Mr. McLaurin had traveled over 75,000 miles and, under the

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program, he was entitled to two free first-class round-trip tickets, four free nights at a Westin hotel, and a 50 percent discount on an Avis rental car for the weekend. Mr. McLaurin used the free trip and free hotel for his own personal benefit. The record shows that Mr. McLaurin accumulated the mileage by both official (Government-paid) and private travel, but the record does not show the number of miles of each type of travel. However, it appears that the majority of the miles were accumulated on official travel.

Legal Analysis

The general rule is that a Federal employee is required to account for any gift, gratuity, or benefit received from private sources incident to the performance of official duty and any payments tendered to the employee are viewed as having been received on behalf of the Government. John B. Currier, B-195946, 59 Comp. Gen. 95 (1979); B-148879, July 20 and August 28, 1970. Therefore, we have held that an employee may not retain any bonus or gift coupon or similar item of value received from a commercial air carrier on the basis of a purchase of an airline ticket to be used for official travel. B-199056, July 15, 1981.

The bonus ticket and free hotel received by Mr. McLaurin clearly fall within the purview of these decisions. The only distinction is that a small portion of the bonus ticket was earned by private travel. We do not believe the fact that a portion of the bonus ticket was earned by private travel, changes the result that the portion of the ticket earned as a result of the official travel belongs to the Government. See B-210717, dated today. Therefore, in applying the decisions cited above, we conclude that the portion of the bonus ticket or gift earned as a result of official travel is viewed as having been received on behalf of the Government. Accordingly, since Mr. McLaurin used the bonus ticket and gift for private use, when it was primarily the property of the Government, Mr. McLaurin must reimburse to the Government the value of the bonus ticket and gifts which were property of the Government.

We also note that at the time of Mr. McLaurin's travel under United's Mileage Plus program, a frequent flyer could use the bonus tickets to the place of his choice and the

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bonus tickets were transferable. Therefore, under that program it is clear that the Government could have sent Mr. McLaurin or some other Government employee on a free flight and at a free hotel while on official travel. However, even if award programs limit the transferability of the bonus flight or restrict bonus flights to specific cities, any bonus earned as a result of official travel belongs to the Government and must be turned into the appropriate agency official. See our decision of today, B-210717, and 41 C.F.R. Part 101-25 amended, 48 Fed. Reg. 48,231, October 18, 1983.

In accordance with the discussion above, the Department of the Interior should collect the full value of the bonus tickets plus the value of the hotel room from Mr. McLaurin. Mr. McLaurin may have this amount reduced by a percentage equal to the percentage of private travel used to obtain the award. However, the burden of proof is on Mr. McLaurin to produce the necessary evidence to show that the travel was paid from personal funds. See generally 4 C.F.R. § 31.7- (1983). If Mr. McLaurin can produce the necessary evidence, then the amount of his liability may be reduced by the appropriate percentage.

We are allowing Mr. McLaurin to reduce his liability because he used these bonus tickets prior to the issuance of the GSA regulations and our decision of today, B-210717, which declare that these bonuses are the property of the Government. After the date of this decision, we hold that any future use of promotional material will result in the employee being liable to the Government for the full value of the bonuses or promotional gifts used.

Milton J. Jordan

Acting Comptroller General
of the United States

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-212559

DATE: February 24, 1984

MATTER OF: Abraham Frydman - Bonus Travel Coupon

DIGEST:

1. A bonus ticket received by an employee as a result of trips paid by both appropriated funds while on official travel and personal funds, is the property of the Government and should be turned into the appropriate officials of the Government.
2. An employee who enters a promotional program and receives a nontransferable free upgrade to first-class service may use such benefits since the Government has no use for such benefits.

This decision responds to a request by Mr. Ludlow C. Martin, Acting Chief Counsel, U.S. Army Electronics Research and Development Command, concerning several issues which arose as a result of bonus coupons earned by Mr. Abraham Frydman while on official business. By decisions of today, B-210717 and B-212236, we have addressed the issues raised by Mr. Martin. However, we will briefly raise and answer all questions raised in Mr. Martin's request.

The first question raised is who owns a bonus airline ticket when a Government employee, who has enrolled in an airline mileage accumulation program, earns a bonus airline coupon based on both Government and personal travel mileage.

As discussed in B-20717 and B-212236, if Government funds are used by an employee on official business and the employee receives a bonus coupon as a result of Government travel and privately financed travel, the bonus ticket or other promotional gift is the property of the Government. See also 41 C.F.R. Part 101.25, as amended, 48 Fed. Reg. 48,231, October 18, 1983.

The second question involves the same situation but asks whether the Government employee should be allowed to use the bonus ticket for personal travel and reimburse the

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Government for that part of the bonus ticket earned as a result of Government travel. On the other hand, should the employee be requested to use the ticket only for Government travel but be reimbursed for the part of the bonus ticket earned as a result of personally financed travel?

The answer to this question, as stated above, is that the employee has an obligation to turn in the ticket to the appropriate agency official. If the bonus ticket can be used for Government travel by either that employee or another employee (if the ticket is transferable), then the agency official involved should use the ticket in that manner. As we stated in B-210717, an employee must not mix Government travel and personal travel under the bonus programs. If the employee wishes to keep the bonus gifts or incentives under such a program, all mileage or trips must be paid from personal funds.

The third question raised is whether an employee who has received a nontransferable, first-class bonus airline ticket, may travel first class while on Government travel, regardless of the availability of coach seats.

In B-210717, dated today, we considered the question of whether employees could use nontransferable services such as free upgrade to first class. We held that the employee may use such benefits since they have no value to the Government.

Milton J. Fowler

Acting Comptroller General
of the United States

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-210717**DATE: February 24, 1984****MATTER OF: Discount Coupons and Other Benefits
Received in the Course of Official Travel****DIGEST:**

1. The general rule is that a Federal employee is obligated to account for any gift, gratuity or benefit received from private sources incident to the performance of official duty. This rule applies to situations where an employee enters a promotional program sponsored by an airline, and, while traveling on official business, receives a discount as a result of entering that promotional program.
2. A bonus ticket received by an employee as a result of trips paid by both appropriated funds while on official travel and personal funds, is the property of the Government and must be turned into the appropriate official of the Government. If employee wishes to participate in the bonus program and retain the benefits from the program, he should make certain that all trips included in the bonus program are paid from personal funds.
3. An employee who enters a promotional program sponsored by airlines which includes free upgrade of service to first class, membership in clubs, and check-cashing privileges, does not have to turn in such benefits to the Government. The Government is unable to use such benefits, and there is no reason for employee not to use such benefits.

**PUBLISHED DECISION
63 Comp. Gen.**

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4. A discount for future travel received by employee while on official travel, which is either non-transferable or carries an expiration date, still is property of the Government and should not be given back to the employee for personal use even if it appears that the Government may have no use for the discount.

The Per Diem, Travel and Transportation Allowance Committee (PDTATAC) of the Department of Defense has requested our opinion concerning the proper disposition of promotional gifts received by employees while on official travel. PDTATAC Control No. 83-1. We hold that such promotional gifts are the property of the Government and that employees may not retain any gift or gratuity received in the course of official travel.

Factual and Legal Background

The request from the Committee states that airlines have instituted frequent-flyer programs which entitle a traveler, who accumulates points or miles on a particular airline, to bonus travel. The more points or miles the individual accumulates, the greater the bonus. Participation in these programs is not automatic and requires the traveler to submit an application. Some airlines charge a fee to enroll and, in addition to discounts on fares or bonus points, some airlines offer a free upgrade to first class service on certain flights.

The Committee has raised five questions concerning these airline programs. These questions will be answered individually below. However, the basic issue is whether the employee is entitled to keep any of these bonuses earned as a result of Government-paid travel.

The general rule is that a Federal employee is required to account for any gift, gratuity, or benefit received from private sources incident to the performance of official duty, and any payments tendered to the employee are viewed as having been received on behalf of the Government. John B. Currier, 59 Comp. Gen. 95 (1979); and B-148879, July 20 and August 28, 1970. Therefore, we have held that an employee may not retain any bonus or gift coupon or similar item of value received from a commercial air carrier on

the basis of a purchase of an airline ticket to be used for official travel. B-199656, July 15, 1981. The rationale behind this rule is to prevent double reimbursement to the employee from the Government and a private source and to avoid a conflict of interest.

Part We note that the General Services Administration (GSA) has recently promulgated regulations in the area. See Federal Property Management Regulation (FPMR) § 101-25.103, 41 C.F.R. § 101-25, as amended, 48 Fed. Reg. 48,231, October 18, 1983. These regulations state that all promotional materials such as bonus flights, reduced-fare coupons, cash, merchandise, gifts, credits toward future free or reduced costs of services or goods, received by an employee in connection with official travel and based on the purchase of ticket, are properly considered to be due the Government and may not be retained by the employee. These regulations provide that promotional materials that provide for future free or reduced costs of travel should be integrated into the agency travel plans to maximize the benefits to the Government. Promotional materials that cannot be used by the agency shall be disposed of in accordance with 41 C.F.R. § 101-25.103-4.

Also, we note that the Office of Government Ethics by memorandum of November 16, 1983, to Designated Agency Ethics Officials, requested that employees be warned against making personal use of any travel promotional benefits received in connection with official travel.

Finally, we note that since participation in these programs is voluntary, an employee who wants to receive benefits for private use should make certain that the only trips credited to his bonus account are those paid from personal funds.

Specific Questions

Question 1. Since travel is arranged by the Government based on cost effectiveness, rather than on membership in one of these programs, traffic managers are unaware when a

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uniformed member or civilian employee has received a travel bonus. Should the burden be placed on the member or employee to turn in the bonus to the Government when participation on the airline promotion program is voluntary and the Government is without control?

Answer 1. The answer to the question is that it is the traveler's responsibility to return to the Government any discounts or benefits received as a result of official travel. See Currier and the GSA regulations, cited above. However, if the employee had to spend money to enter a program, as discussed above, the employee may submit a voucher which documents his out-of-pocket expenses spent to enter into the program. The Government should reimburse the employee's out-of-pocket expenses if those expenses are less than the discount received by the employee from the airlines. For example, if the employee spends \$25 to enter a program, and, as a result, the Government has received a benefit because his airline fare was reduced from \$400 to \$300 solely as a result of his entering the program, then the employee should be reimbursed for the cost of entering the program. Of course, the Government should only reimburse the employee up to the amount the employee pays to enter the program and only to the extent that the Government has received a benefit solely due to his entering that program.

Question 2. Most bonus travel requires more than one trip to be eligible. Some of those trips may be paid from personal funds. If a free ticket is obtained from a combination of appropriated and personal funds, who does the ticket belong to?

Answer 2. Consistent with the regulations, above, our answer to this question is that the ticket (or certificate) is the property of the Government if part of the ticket was obtained through the use of appropriated funds while on official travel. This result prevents a conflict of interest from arising. See, generally, 5 C.F.R. §§ 735.201 et seq. The employee has an obligation to turn in the bonus ticket to the Government based on the general rule cited above. If the employee has used the bonus ticket for personal use, he must reimburse the value of the bonus ticket to the Government. See B-212236, dated today. *63 Comp. Law.* Finally, as stated above, if the employee wishes to Law.

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participate in the bonus program and retain the benefits from the program, he should make certain that all trips included in the bonus program are paid from personal funds.

Question 3. Besides travel bonuses, most programs provide other optional benefits, such as free upgrade to first class, membership in executive clubs, i.e., Delta's Crown Room Club, check-cashing privileges, etc., which have no value to the Government. Should such items be turned over to the Government if the value cannot be redeemed?

Answer 3. We do not believe that items such as free upgrade to first class, membership in executive clubs, and check-cashing privileges could be turned over to the Government. Obviously, such benefits could only be used by the employee and could not be used by the Government. Therefore, we see no reason that these items could or should be turned over to the Government. We also hold that the employee may use such benefits because denying the employee such benefits would serve no purpose.

Question 4. Travel bonuses are transferable in most cases; however, they may carry an expiration date. Although every attempt is made to take advantage of free travel opportunities, should the recipient of the bonus be denied its use if the Government is unable to use it within a reasonable time?

Answer 4. Even if the Government is unable to take advantage of free travel opportunities after every reasonable attempt, the bonus should not be returned to the employee. The reason for this is that the travel bonus never legally belonged to the employee. If a free flight for personal use was given to an employee by an agency, this would be tantamount to an illegal supplement of the employee's salary. In the case where the bonus is transferable, the employee who received the bonus as a result of official travel has no more legal right to this bonus than any other employee of the agency.

Question 5. Some items are non-transferable. One uniformed member was given a flight coupon worth \$200 as involuntary denied boarding compensation. Under Comptroller General decision B-195946, November 26, 1979, the coupon was turned over to the Government; however, unless this particular

59 Comp. Gen. 95

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traveler is given further travel orders, it will go unused. Should non-transferable travel bonuses be denied to the recipient if the Government is unable to use them?

Answer 5. If the items are not transferable such as the coupon here, then if it is necessary to send that employee on official travel the coupon would be available for such a purpose. If the coupon is returned to the employee for personal use and then the agency decides to send the employee on official travel the discount coupon will not be available. Therefore, the Government should retain the coupon even if it is unable to use it at this time.

This concludes the questions raised by the Committee. However, we note one situation which has also arisen lately, that is, the receipt of gifts of nominal value as a result of official travel. We note that the Government Ethics Regulation allows employees to keep promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value. See 5 C.F.R. § 735.202(b)(4) (1983). We see no reason why employees on official travel who receive such gifts should return them to the Government. Accordingly, employees may keep gifts which are of nominal intrinsic value.

Milton J. Jordan

Acting Comptroller General
of the United States

1. through 4.:
TRAVEL EXPENSES
Air travel
Bonuses, gifts, etc.

1.
GIFTS
To officers and employees
Accountability