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DECISION



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

FILE: B-200017

DATE: March 10, 1981

[Certification of Voucher Covering Payments For

MATTER OF: Internal Revenue Service--*Live Entertainment and Lunch Expense for National Black History Month]*

- DIGEST: 1. Internal Revenue Service may certify payment for a live African dance troupe performance incident to agency sponsored Equal Employment Opportunity (EEO) Black history program because performance is legitimate part of employee training. Although our previous decisions considered such performances as a non-allowable entertainment expense, in this decision we have adopted guidelines developed by the Office of Personnel Management (OPM) that establishes criteria under which such performances may be considered a legitimate part of the agency's EEO program. 58 Comp. Gen. 202 (1979), B-199387, August 22, 1980, and B-194433 (July 18, 1979) and any previous decisions to the contrary are overruled.
2. Internal Revenue Service may use appropriated funds to buy lunches for guest speakers on program held in observance of National Afro-American (Black) History Month, under 5 U.S.C. § 5703 which provides authority for per diem or subsistence expenses for individuals serving without pay.

This responds to a request from Mr. Michael J. Higgins, Chief, Fiscal Management Branch, North Atlantic Region, Internal Revenue Service, Department of the Treasury, for a ruling on whether to certify a reimbursement voucher covering payments for a performance by African dancers and for lunches for guest speakers at a ceremony observing Black History Month in February, 1980. Based on the rationale set forth below, we have concluded that the Service may certify payment for the dance performance and the lunches.

President Carter declared February, 1980, as National Afro-American (Black) History Month by a Message of the President signed on January 15, 1980. (See Weekly compilation of Presidential Documents, vol. 16, No. 3, pages 84-86 (January 21, 1980).) The

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Buffalo Office of the Service's North Atlantic Region conducted activities designed to celebrate Black History Month. The Chief of Resources Management in Buffalo has indicated informally that the African dance troupe's performance was part of a 3 day program designed to familiarize employees of the Buffalo District with the cultural history of Black people. In addition to the dance performance the program consisted of displays of African artifacts and wearing apparel, posters depicting aspects of Black life, films, formal discussions of Black history, and the serving of Black ethnic food for lunch in the cafeteria. All these activities were conducted during the lunch hour. We also understand that two senior citizen guest speakers were provided lunch at government expense once during the program.

The Buffalo District cashier paid \$75 to the Buffalo African Cultural Center for the dance troupe performance, and \$4.55 for the speakers' lunches from the Small Purchase Imprest Fund. The cashier then presented a reimbursement voucher in the amount of \$79.55, representing the two expenditures to the Regional Office for replenishment of the Fund. The Regional Office refused to pay the voucher, relying on our holding in 58 Comp. Gen. 202 (1979), and submitted the question to this Office for a decision.

The factual situation of the opinion relied upon by the Regional Office was similar to the present case in that it involved the legality of a payment for an ethnic music presentation as a part of an Equal Employment Opportunity (EEO) special emphasis program. In that decision we pointed out that Federal funds could not legally be expended for employee entertainment. Because we were unable to distinguish between musical and other artistic presentations for employee entertainment and such presentations for EEO program activities, we stated that we would consider all such future presentations as employee entertainment and therefore illegal in the absence of official guidelines detailing the circumstances under which such presentations may be made in connection with EEO special emphasis programs.

Since we issued that decision we have held informal discussions with the Director of the Office of Affirmative Employment Programs, Office of Personnel Management (OPM) regarding the criteria that should be instituted to govern artistic presentations at agency sponsored EEO special emphasis programs. We discovered that the Office of Affirmative Employment Programs has developed guidelines for artistic presentations at agency sponsored Hispanic Heritage Week programs.

These guidelines provides as follows:

"Each year Hispanic Heritage Week is celebrated by more Federal agencies than ever before. Hispanic Heritage Week is becoming an American traditional event. Nevertheless, some members of the Hispanic community have expressed concerns about the purely entertainment aspect of some celebrations. In addition, a number of Federal agencies have found it difficult to allocate funds, and still others have raised legal questions about expenditures.

"The Hispanic Heritage Week observance should not be viewed as an end in itself. The observance is an excellent opportunity to add substance and lasting visibility to the Hispanic Employment Program. Often, celebrations are held year after year with no thought to their impact during the intervening months. In addition, the celebrations often conclude with no measurable or significant concrete accomplishments which can benefit the Hispanic community. We can improve upon this situation by generating official support for the Hispanic Employment Program and its objectives. We know, for example, that stereotypes are a major barrier to Hispanic employment. The Heritage Week activities could be geared to eradicating these misconceptions in a direct and unalienating manner. Further, during this week, new programatic goals could be enunciated by management, with results to be evaluated during the following year's celebration. By emphasizing commitment to the program and a wide understanding of its purpose we can ensure that substantive issues are addressed and that lasting results are achieved.

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"It is important to make clear that (1) cultural events are related to the observance of Hispanic Heritage Week, and (2) intent is shown to develop cultural awareness rather than just entertainment. If ethnic music is provided, for example, it can be introduced as an element of the celebration since music is one of the cultural influences Hispanics have exerted in this country.

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"The observance of Hispanic Heritage Week should emphasize the rich diversity of Hispanic cultural background, the varied manifestations of the performing arts, values, history, and accomplishments and contributions to the American society. It should also touch on concerns, especially employment concerns.

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"Recitals, folkloric dances and music, and other social activities can certainly add a picturesque element to the Hispanic Heritage Week observance. However, an explanation of the relevance, the meaning, the roots, or the history of such activities should be an integral part of the performance. In doing that, we will avoid presentations or activities which instead of enlightening the audience with the cultural aspects of the Hispanic heritage might tend to perpetuate some of the stereotypes which are now serving as employment-barriers."

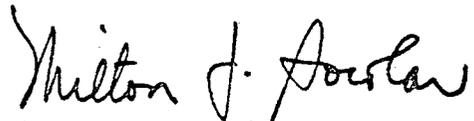
We were informed by the Director that these guidelines were intended to be "generic" in scope; i.e., that they should be read as applying to analogous situations. We were also informed that OPM is considering issuance of formal guidance which would apply to all similar ethnic or cultural programs.

After reviewing the above-quoted guidelines, we believe they provide a reasonable basis for distinguishing EEO special emphasis program artistic presentations from employee entertainment. Accordingly we are of the opinion that criteria along the lines of those developed for Hispanic programs may be applied on a uniform basis to all EEO ethnic and cultural special emphasis programs such as Afro-American (Black) History and American Indian History programs.

In light of these guidelines, we now take the view that we will consider a live artistic performance as an authorized part of an agency's EEO effort if, as in this case, it is a part of a formal program determined by the agency to be intended to advance EEO objectives, and consists of a number of different types of presentations designed to promote EEO training objectives of making the audience aware of the culture or ethnic history being celebrated. This view is contrary to our holding in 53 Comp. Gen. 202, above, B-199387, August 22, 1980, and B-194433, July 18, 1979, which are therefore overruled.

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With reference to the expenditure for the lunches, we note that 5 U.S.C. § 5703 authorizes per diem, (including subsistence), travel, and transportation expenses for individuals serving without pay while away from their homes or regular places of business. See 37 Comp. Gen. 349 (1957). The two senior citizen guest speakers had agreed to participate in the program, without compensation, solely for the benefit of the Government. On the assumption that they were in fact away from their homes or regular places of business, the Service may therefore also allow the \$4.55 guest speaker luncheon expenses.



Acting Comptroller General
of the United States