

# Couple Beats the IRS on Almost \$300,000 of American Express Card Benefits

Can gaming credit card rewards lead to trouble with the IRS? One couple found out and oddly enough, Tax Court went in their favor!

The recent Tax Court decision of *Anikeev v. Commissioner* (*T.C. Memo 2021-23*) is an interesting study in what the IRS interprets as taxable income versus what has actually been codified into tax law. The judge determined that years of rather informal guidelines set by the IRS concerning credit card rewards and redemption meant that the agency could not actually tax the benefits realized by the couple.

Most people who take advantage of credit card rewards don't have anything to worry about as far as tax authorities are concerned. Non-cash rewards tend to be worth far less than the purchase prices required to redeem them, and cash rewards are generally seen as nontaxable rebates since they were conditioned on making a purchase. In *Anikeev v. Commissioner* however, it was ultimately tested how liberally the IRS would interpret this principle when they took advantage of the American Express Blue Cash program to the tune of nearly \$300,000.

## The Basic Facts of *Anikeev v. Commissioner*

Nadezhda and Konstantin Anikeev were a married couple who were also both American Express Blue cardholders in 2013 and 2014. The Blue Cash Rewards Program would pay out 1-5% on all eligible purchases made with the American Express Blue card with no limits. The Anikeevs figured out that the cash rewards weren't limited to basic purchases: American Express would also give them cash for buying cash equivalents like Visa gift cards, money orders, reloadable debit cards, and sums reloaded onto these cards.

The couple chiefly purchased Visa gift cards that entailed service fees of 0.8-1.2% on the face value of each card. Subsequently, they would use the Visa gift cards to buy money orders which carried service fees of 0.07-0.33% of their face value. The redemption would conclude with depositing the money orders into their bank accounts.

When the monthly American Express bills arrived, the Anikeevs would pay them with the money deposited from these money orders or reloadable debit cards purchased for the same purpose. With the bills paid, the Blue Cash rewards would then arrive based on the total amount of eligible purchases—which included the purchase of these cash equivalents without needing to pay for any other goods and services in the same billing cycle.

Even after factoring in the transaction fees for the gift cards and money orders, the Anikeevs came out ahead on the cash payments they received from the Blue Cash program. American Express also did not object to what they were doing. Since American Express did not seem to have a problem with how they were using the cards, the couple became more aggressive with charging large amounts of Visa gift cards and money orders to the point that they received \$36,200 in cash back in 2013, and

\$277,275 in 2014 as statement credits. Given that rebates are generally not taxable income regardless of the amount, the Anikeevs did not report their Blue Cash rewards on their tax returns.

However, when their bank deposit records did not align with the amounts reported on their 2013 and 2014 tax returns, the IRS put the Anikeevs under audit for the 2013 and 2014 tax years and issued notices of deficiency for \$29,775 and \$265,485 respectively. They challenged the IRS in Tax Court on the assertion that a purchase incentive or rebate only reduces the purchase price, and is not treated as income.

## Credit Card and Loyalty Program Rewards and Rebates Not Taxable

The linchpin in *Anikeev v. Commission* is [Revenue Ruling 76-96](#). The IRS argued that the Anikeevs earned ordinary income because the gift cards and money orders were cash equivalents, and it was their intent to buy cash equivalents and get more cash in return for it. Therefore, the gain on these purchases that exceeded the purchase price should be considered income. The Anikeevs disagreed, citing the above Revenue Ruling that their intent of the American Express purchases was irrelevant because credit card rewards and rebates are only treated as a reduction in purchase price.

The IRS then argued that they weren't actually purchasing property or services, and reduction in purchase price did not apply and would be considered "an accession to wealth". Tax Court agreed with the Anikeevs, citing that rebates are indeed reductions in purchase price and do not constitute gross income. While the couple's aggressive gaming of the rewards program caused the IRS' own ruling to fall into a gray area over its own vagueness, the Court ultimately ruled in the Anikeevs' favor because the gift cards they purchased could not be deposited into a bank account or be automatically converted to cash. Hence, using the gift cards to buy money orders so they *could* be converted into cash.

While the IRS also argued that the Blue Cash rewards received was cash, not products, Tax Court determined that the Visa gift cards had some aspect of being an actual product rather than a cash equivalent. Ultimately though, the Anikeevs received the cash rewards from American Express as a result of making purchases—even though they had the intent to cash them out.

There are many interesting takeaways from this case regarding the Anikeevs' intent and how the Court interpreted this matter differently than the IRS. Congress is ultimately who writes our tax laws and the IRS interprets and enforces them, and it's doubtful that legislation which puts a tax hike on credit card reward programs is going to be very popular—with taxpayers or the financial industry. Because the current IRS language regarding credit card rewards is so vague, it is possible this case's outcome may cause them to update the Revenue Ruling with a narrower interpretation.

Jeff Lipsey and Associates can assist taxpayers under examination for items that may not actually constitute taxable income. Contact us today to speak to one of our friendly and professional tax law experts.