

DECISION

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

60374

FILE: B-185161

DATE: JAN 9 1976 099354

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MATTER OF: Charles M. Otterback - Reimbursement of expenses incurred in sale of residence after voluntary retirement of employee

DIGEST:

1. Although employee voluntarily retired from Government service 4 months prior to final settlement on sale of residence at old official duty station, he is entitled to reimbursement of real estate expenses where sale was completed within the 2-year extended time period following date he reported for duty at new official duty station, since he completed 12 months of service required by his transportation agreement and transferred employee's right to reimbursement of real estate expenses continues after date of voluntary retirement.
2. Certifying officers should address requests for advance decisions under the provisions of 31 U.S.C. §82d to the Comptroller General of the United States, Washington, D.C. 20548

This matter was submitted for an advance decision by Florence M. Oakley, Certifying Officer at the Mid-Atlantic Region Office of the Internal Revenue Service (IRS), Department of the Treasury. The question presented is whether a voucher dated April 29, 1975, in the amount of \$3,445, in favor of a retired Government employee and representing reimbursement of expenses incurred in the sale of his former residence at his old official duty station, may be certified for payment.

The record indicates that Charles M. Otterback, then an employee of the IRS, was transferred from his official duty station in Washington, D.C., to Bailey's Crossroads, Virginia, under authorization of Travel Order No. RICH-73-14, dated March 28, 1973, and that he reported for duty at his new station on April 30, 1973. Mr. Otterback had executed a 12-month service agreement, as required by subsection 1.5a(1) of Office of Management and Budget Circular No. A-56, revised August 17, 1971, now paragraph 2-1.5a(1) (a) of the Federal Travel Regulations (FPMR 101-7)(May 1973), and had been authorized moving expense reimbursement.

Unavailability of mortgage money caused Mr. Otterback difficulty in selling his old residence in Silver Spring, Maryland. Therefore, he requested and received a 1-year extension of the time period during which real estate expenses would be reimbursable. On December 31, 1974, Mr. Otterback voluntarily retired from Government service. Subsequently, he contracted the sale of his old residence on April 18, 1975, and on April 28, 1975, he completed settlement. Mr. Otterback then submitted a travel voucher seeking reimbursement. Because the sale of the employee's residence was consummated after the date of his voluntary retirement, the IRS is in doubt as to whether the voucher may properly be paid.

In 47 Comp. Gen. 189 (1967) our Office indicated in response to a general inquiry that reimbursement of real estate expenses would be doubtful where no expenses were incurred or binding obligations entered into prior to the death or separation without fault of the employee. It should be noted, however, that the last sentence of that decision stated, "Any actual cases of this nature should be submitted here for separate consideration." Mr. Otterback's claim, before us for decision, presents such a case. The basic question presented is whether a transferred employee's right to reimbursement for relocation expenses continues after his voluntary retirement from Government service so as to permit reimbursement for expenses incurred after his retirement.

Reimbursement to Federal employees for certain expenses related to the sale or purchase of residences incident to transfers is governed by section 5724a(a) (4) of title 5, United States Code (1970), and implementing regulations. The purpose of the statutory provisions authorizing Government payment of relocation expenses of transferred employees (5 U.S.C. §5724a (1970)) is to reimburse the extra expenses incurred by the employees in connection with transfers of official duty stations. The right to reimbursement of relocation expenses applies to each employee transferred in the interest of the Government from one official station or agency to another for permanent duty. 5 U.S.C. §5724(a)(1) (1970). As the submission from the certifying officer clearly points out, Mr. Otterback had been authorized moving expense reimbursement in connection with the transfer of his official duty station and, therefore the IRS had determined that the transfer was "in the interest of the Government."

The regulations in effect during the period covered by the transaction, the Federal Travel Regulations (FTR 101-7) (May 1973), provide in paragraph 2-6.1e that the settlement date for the sale of the old residence must be within 1 year of the date on which the employee reported for duty. It further provides that the time limitation can be extended for an additional period of time, not to exceed 1 year "so long as it is determined that the particular residence transaction is reasonably related to the transfer of official station." Since Mr. Otterback was granted such an extension due to the difficulties experienced in attempting to sell the home resulting from the unavailability of mortgage money accessible to prospective purchasers, the IRS evidently determined that sale within the 2-year period following the date Mr. Otterback reported for duty at Bailey's Crossroads would be reasonably related to his transfer. The settlement was completed on April 28, 1975, within the 2-year time period, and were it not for the fact that claimant retired 4 months prior to settlement, there would be no doubt as to the propriety of reimbursement of the real estate expenses incurred.

5 U.S.C. §5724 (i) (1970) requires that an employee must agree in writing to remain in Government service for 12 months after his transfer in order to be allowed reimbursement of relocation expenses, unless the employee is separated for reasons beyond his control which are acceptable to the agency concerned. Our Office has held that the voluntary separation of an employee upon satisfying the age and service requirements for optional retirement may be considered as a reason beyond the control of the employee, and that such retirement prior to the completion of the 12-month period of Government service is not a bar to recovery of relocation expenses if acceptable to the agency. 46 Comp. Gen. 724, 726 (1967). In decision B-180466, July 10, 1974, we considered the situation of an employee who, after executing a 12-month service agreement incident to a transfer, was released from his obligation so that he might retire early. We allowed reimbursement of expenses incurred in connection with the sale of his old residence even though settlement was not effected until after he had retired. Our Office has also allowed reimbursement of expenses related to the sale of a residence at the old official duty station where the transferred employee had died before completing the 12-month service agreement and the sale was not completed until after the employee's death. B-183380, November 24, 1975.

It is significant that Mr. Otterback, unlike the employees in the above-cited cases, also completed the 12 months of required service before he retired on December 31, 1974, and has thereby fully complied with his service agreement. In view of that fact and since we have allowed reimbursement of real estate expenses in the above-cited cases, the voucher for reimbursement of his real estate expenses may be certified for payment if otherwise proper.

We note that the request for decision was addressed to the Transportation and Claims Division of our Office - not the Comptroller General of the United States. In order to expedite a request for decision under the provisions of the Act of December 29, 1941, ch. 641, §3, 55 Stat. 876, 31 U.S.C. §82d, the request should be addressed to the Comptroller General of the United States, Washington, D.C. 20548. 22 Comp. Gen. 725 (1943).

R. F. Keller

Deputy¹ Comptroller General
of the United States