

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

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FILE: B-213806**DATE:** May 16, 1984**MATTER OF:** Roger E. Burgess, Jr. - Shipment of
Foreign-Made, Foreign-Purchased Motor
Vehicle from Overseas Post to
DIGEST: United States

State Department employee purchased a foreign-made vehicle in 1978 during tour of duty in Leningrad, Russia. At that time, Leningrad was not one of the posts of duty granted an exception to the restriction on the shipment of a foreign-made, foreign-purchased vehicle to the United States at Government expense. 6 FAM 165.9-2. In 1980, claimant transferred from Leningrad to Copenhagen, Denmark, and his vehicle was shipped at Government expense. Leningrad was added to the list of posts granted exceptions in 1982, but employee's vehicle does not qualify for shipment to the United States since Leningrad was not added to list of excepted posts until after his transfer to Copenhagen and Copenhagen is not on such list. Travel authorization may not be amended to authorize shipment.

This decision is in response to a request by the Associate Comptroller for Budget and Planning, on behalf of the Secretary of State, United States Department of State. He asks whether a travel authorization issued on August 3, 1983, to Mr. Roger E. Burgess, Jr., an employee of the agency, may be amended to authorize the shipment, at Government expense, of a foreign-made, foreign-purchased privately owned vehicle (POV) from Copenhagen, Denmark, to the United States. For the reasons hereafter stated, the travel authorization may not be amended.

The Department of State was directed by Congress to cease payment after December 31, 1972, on shipments of foreign-made, foreign-purchased vehicles to the United States unless the vehicle qualified under one of the exception provisions of section 165.9-1, Volume 6, Foreign Affairs Manual (6 FAM). In response to the Congressional

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directive, the Department of State formally amended 6 FAM 165.9 on November 14, 1973, with a retroactive effective date of January 1, 1973.

Mr. Burgess purchased a foreign-made motor vehicle in 1978 during a tour of duty in Leningrad, Russia. At that time, Leningrad was not one of the posts of duty granted an exception to the restriction on the shipment of a foreign-made, foreign-purchased POV to the United States at Government expense. 6 FAM 165.9-2.

In 1980, Mr. Burgess was transferred from Leningrad to Copenhagen. His foreign-made, foreign-purchased POV was shipped from Leningrad to Copenhagen at Government expense. 6 FAM 165.9. On January 18, 1982, Leningrad was added to the list of posts granted exceptions to the restriction on the shipment of a foreign-made, foreign-purchased POV to the United States at Government expense. Copenhagen is not on the list of posts granted exceptions.

Mr. Burgess is seeking the amendment of his travel orders to authorize shipment of his foreign-made, foreign-purchased POV based upon the retroactive application of 6 FAM 165.9, to January 1, 1973. Thus, the pivotal question in this case is whether Mr. Burgess' travel authorization may be amended since Leningrad was added to the list of posts granted exceptions in January 1982, 2 years after his transfer from Leningrad to Copenhagen. The answer is in the negative.

The facts presented here show that Leningrad was not on the list of posts granted exceptions prior to or during Mr. Burgess' tour of duty in Leningrad. The claimant was transferred from Leningrad to Copenhagen in 1980, and Leningrad was not added to the list of posts granted exceptions until 1982, approximately 2 years later. Thus, under the previously stated regulatory provisions, Mr. Burgess' vehicle did not qualify for shipment to the United States. His vehicle could not and did not qualify for shipment after he had been transferred from Leningrad. Finally, Copenhagen is not on the list of posts granted exceptions.

Further, the retroactive effect given the provisions of 6 FAM 165.9 to January 1, 1973, is not germane to a decision in this case. The amendment of this section of the FAM was

made many years prior to the foreign purchase of a foreign-made vehicle by Mr. Burgess in 1978. Therefore, the amendment of the regulation, which has the force and effect of law, was applicable from the stated effective date, January 1, 1973, and was in full force and effect when Mr. Burgess purchased the vehicle in question in 1978.

We believe that the retroactive date applies only to the effective date of the initial regulation, and does not pertain to any subsequent revisions. In fact, each revision listing the posts granted an exception contains its own effective date. Further, the reference to the retroactive date was deleted August 12, 1983, prior to the date Mr. Burgess commenced travel.

Accordingly, the travel authorization dated August 3, 1983, issued to Mr. Roger E. Burgess, Jr., may not be amended to authorize shipment of his foreign-made, foreign-purchased privately-owned vehicle from Copenhagen, Denmark, to the United States.

Milton J. Arolov
for Comptroller General
of the United States