DECISION

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

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FILE: B-217564 DATE: August 13, 1985

MATTER OF: George C. Warner

DIGEST:

> Under Foreign Affairs Manual Circular No. 378, an employee who sold his automobile abroad was allowed to retain only its acquisition cost and was required to account to the Government for the profits of its sale. Where the employee had taken a month of annual leave and had driven his new car from its place of purchase in West Germany to his post of duty in New Delhi, he may not include personal travel expenses as part of the automobile's acquisition cost. Since he was reimbursed by the Government for the constructive cost of commercially shipping the vehicle from West Germany to New Delhi, any refund from profits based on personal travel expenses would contravene the Circular's prohibition against United States employees profiting directly or indirectly from the sale of personal property abroad.

Mr. George C. Warner appeals from a settlement dated October 31, 1984, issued by our Claims Group (Z-2847642), which disallowed his claim for a refund of the profits he received from the sale of an automobile at his overseas post of duty. We sustain the disallowance and deny Mr. Warner's request to offset personal travel expenses against the profits of sale for which he is accountable under Foreign Affairs Manual Circular No. 378, February 1, 1966.

Facts

Mr. Warner, then an employee of the Agency for International Development, was transferred from Bangladesh to New Delhi, India, on April 19, 1977. Between July 23 and August 23, 1977, while on annual leave, he and his wife traveled first to London and then to Stuttgart, Germany, where they accepted delivery of a new automobile. Their return to New Delhi with the automobile took 23 days and

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involved automobile travel by way of Austria, Yugoslavia, Bulgaria, Turkey, Iran, Afghanistan, Pakistan and India. Based on authorization for the importation of a privately owned vehicle at Government expense under the provisions of 6 Foreign Affairs Manual 165.4, Mr. Warner was reimbursed $1,012.42 for the constructive cost of transporting the vehicle by commercial means between West Germany and New Delhi.

In February 1980 Mr. Warner was transferred to Bangkok, Thailand, where, in November, he sold the vehicle. From the proceeds of the sale he was permitted to retain an amount equal to the vehicle's acquisition cost, which included the invoice price, the cost of improvements, and interest paid on loans obtained to finance the purchase. The Embassy in Bangkok retained $1,725.04, the difference between the sale proceeds and the acquisition cost, under the authority of Foreign Affairs Manual Circular No. 378.

Mr. Warner's claim for a refund from the profits of the sale is based on the theory that his and his wife's round-trip travel costs between New Delhi and London should have been included as part of the vehicle's acquisition cost. He claims that these travel costs exceed $1,725.04. The certifying officer has recommended that if Mr. Warner's claim is to be allowed, any refund should be limited to $542.72 and should not include his wife's travel expenses or any expenses associated with circuitous or interrupted travel. The $542.72 amount reflects the difference between the reasonable travel expenses relating to transportation of the vehicle and the constructive cost he has already been reimbursed ($1,555.14 minus $1,012.42).

Until May 1983, the sale of personal automobiles abroad by United States employees was governed by Foreign Affairs Manual Circular No. 378. Generally, the Circular prohibited foreign sales of personal property at prices which produce profits resulting from import privileges that United States employees derive from their official status. Employees were allowed to sell automobiles abroad provided the terms of sale were approved and provided they did not retain any of the excess proceeds. The term "excess proceeds" was defined in paragraph 14 of the Circular as "the amount by which the sales price, including any nonmonetary considerations, exceeds the acquisition cost." The employee's "acquisition cost" was defined as "the initial price paid * * * plus inland and overseas transportation, taxes, customs and capital improvements." In Mr. Warner's case, the acquisition cost he was allowed to retain did not include any amount for "inland or overseas transportation" because he had already been reimbursed by the Government for the constructive cost of ocean freight shipment from West Germany to Bombay and railway freight shipment from Bombay to New Delhi.

In this particular case, where the employee took annual leave and combined the purchase of an automobile with personal travel, we believe the agency was correct in excluding his and his wife's travel expenses for the purpose of determining the vehicle's acquisition cost. In defining excess proceeds to include nonmonetary considerations, the Circular is directed at prohibiting profiteering, whether indirect or direct. We see little substantive distinction between allowing an employee to retain the proceeds of a sale to finance personal travel while on annual leave and reimbursing him out of the proceeds after the travel has been completed. Since the refund Mr. Warner claims would allow him to profit, at least indirectly, from the sale of his personal automobile abroad, we sustain the disallowance of his claim.

for Milton J. Socolar
Comptroller General
of the United States