



DIGEST

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

B-176726

JAN 19 1973

Elk Grove Village, Illinois 60007

Dear Mr.

Reference is made to your letter of October 15, 1972, wherein you appeal from the action taken by our Transportation and Claims Division in withholding \$82 for Federal income tax purposes from the relocation allowances which you were found to be entitled to incident to a proposed change of official station as an employee of the Department of the Navy.

You state that the reimbursement for the real estate expenses is a refund of money expended by you and should not be considered as income. Therefore, you question the propriety of withholding \$82 for Federal income tax purposes.

In that connection we point out that section 217, title 26, United States Code, as amended by the Tax Reform Act of 1969, approved December 30, 1969, Public Law 91-172, 83 Stat. 487, 577, sets forth the manner in which moving expenses may be deducted from income so as not to be subject to the withholding tax. Section 217 provides in pertinent part as follows:

"(a) DEDUCTION ALLOWED.—There shall be allowed as a deduction moving expenses paid or incurred during the taxable year in connection with the commencement of work by the taxpayer as an employee or as a self-employed individual at a new principal place of work.

\* \* \* \* \*

"(c) CONDITIONS FOR ALLOWANCE.—No deduction shall be allowed under this section unless—

"(1) the taxpayer's new principal place of work—

"(A) is at least 50 miles farther from his former residence than was his former principal place of work, or

\* \* \* \* \*

B-176726

"(2) either—

"(A) during the 12-month period immediately following his arrival in the general location of his new principal place of work, the taxpayer is a full-time employee, in such general location, during at least 39 weeks, or"

Section 3401<sup>✓</sup> of title 26 concerning the withholding of income taxes provides in pertinent part that:

"(a) Wages.

"For purposes of this chapter, the term 'wages' means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid—

\* \* \* \* \*

"(15) to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 \* \* \*"

Since the reimbursement which you received as a result of the settlement of your claim on September 20, 1972, was for the forfeiture of the \$400 deposit on the purchase of a residence at your new official station and for \$10 legal fee and since you did not in fact move to your new official station or work there for at least 39 weeks as required by section 217(c)<sup>✓</sup> the amount which you were reimbursed would appear to be a remuneration for which a corresponding deduction is not allowable under section 217<sup>X</sup>

Accordingly, the action of our Transportation and Claims Division in withholding the amount in question must be sustained.

B-176726

We suggest if you have any further question in regard to the matter that it be taken up with the Internal Revenue Service at the time you file your income tax return for 1972. A copy of an Internal Revenue Service instruction is enclosed for your information.

Very truly yours,

PAUL G. DEMBLING

For the Comptroller General  
of the United States

Enclosure