

DECISION

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

FILE: B-183936

DATE:

FEB 11 1976

MATTER OF: Richard L. Alpin - Pro rata reimbursement
for purchase of two-family dwelling

DIGEST:

1. Employee who purchased two-family dwelling is entitled to pro rata reimbursement of otherwise allowable real estate expenses since OMB Circular No. A-56 does not contemplate application of fixed 50 percent formula whenever an employee purchases a two-family dwelling. In establishing the applicable reimbursement percentage when more than 50 percent is claimed, the agency should require the employee to submit specific information as to the space occupied by the employee as residence and living quarters and, if necessary, an expert opinion as to the propriety of the percentage claimed.
2. Where employee purchases two-family dwelling, otherwise allowable real estate expenses which are based on a flat fee, without regard to purchase price, should, if reasonable, be reimbursed in toto.

This matter is before us on a request for an advance decision from an authorized certifying officer of the Internal Revenue Service. It concerns the allowability of certain real estate expenses which were incurred by Mr. Richard L. Alpin, an employee of the Service, in connection with the purchase of a two-family home at Rocky Point, New York, on December 4, 1972, in connection with his transfer to Holtsville, New York.

The record shows that Mr. Alpin claimed 85 percent of the expenses incident to his purchase of the two-family dwelling. He states that his family exclusively occupied the main floor of the house, the basement, a two-car garage, patio, and all grounds. The tenants are said to occupy an apartment "equivalent" to the main floor of the dwelling. Also, Mr. Alpin states that the tenants may not use the grounds, patio, basement, garage, or main floor. Mr. Alpin claims reimbursement of 85 percent of the following real estate expenses because the portion of exclusive use by his family is 85 percent of the total purchase:

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Legal fees	\$ 175.00
Legal fees	360.00
Record fees	15.15
Appraisal fees	40.00
Termite inspection	21.40
Credit report	10.00
Mortgage insurance	162.00
Fee insurance	126.00
Document stamps	45.65
Mortgage stamps	57.62
Gratuity	5.00
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Total	<u>\$1,017.82</u>

Pending resolution of the matter by this Office, the claimed real estate expenses of \$865.15 (85 percent of \$1,017.82) have been administratively suspended from the travel voucher in the apparent belief that Mr. Alpin's reimbursement entitlement was limited to one-half of his real estate expenses (total expenses divided by the number of dwelling units).

Title 5, United States Code, section 5724a(a)(4) (1970), allows reimbursement to transferred employees of certain real estate expenses incident to the purchase of a residence at the new duty station. The governing statutory regulation, section 4.1 of Office of Management and Budget Circular No. A-56, revised August 17, 1971, provides in pertinent part as follows:

"Payment of expenses by employee--pro rata entitlement * * * If the residence is a duplex or another type of multiple occupancy dwelling which is occupied only partially by the employee * * * expenses will be reimbursed on a pro rata basis * * *." (Emphasis added.)

The foregoing regulation does not necessarily contemplate the application of fixed percentage formulas whenever an employee purchases a multiple occupancy dwelling. See B-176531, November 29, 1973; B-166402, May 7, 1969. Rather, the regulation provides that otherwise allowable real estate expenses will be reimbursed on a pro rata basis between those portions of the purchased property which are actually and reasonably utilized as living quarters and those portions of such property which are devoted, in whole or in part, to commercial

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or nonresidence use. Compare B-163187, February 19, 1968. Depending upon the facts of each case, the allowable percentage of reimbursement may, therefore, be greater or lower than 50 percent in the case of the purchase of a two-family dwelling.

The prorating of expenses involves a determination that should initially be made by the administrative agency to which the claim is submitted. 54 Comp. Gen. 597, 598 (1975). It would appear that when an employee purchases a two-family dwelling and rents one of the units, he normally would be entitled to be reimbursed 50 percent of the otherwise allowable expenses. B-166402, May 7, 1968. However, in the present case, Mr. Alpin claims 85 percent of the costs. Therefore, the certifying officer should obtain more specific information and, if necessary, require Mr. Alpin to submit an opinion by a real estate expert that specifies which costs of purchase are fairly attributable to that portion of the purchase utilized as the employee's residence and living quarters. Expenses of purchase which are allocable to the leased portions of the dwelling or allocable to those areas appurtenant to the dwelling utilized by the tenants, are neither allowable expenses nor includable in the reimbursement percentage. In this connection we point out that although Mr. Alpin maintains that the tenants have no use of the grounds, some consideration must be given to the area through which tenants enter into and exit from the leased quarters.

Additionally, the agency should take into account the billing practices of attorneys, realtors, and insurers in the Rocky Point locality. There are certain services which are performed for a flat fee, without regard to the purchase price, whereas the fees for other services are assessed on the basis of a percentage of the purchase price. Fees that are based on a percentage of the purchase price must be prorated in accordance with a ratio formula of residence and living quarters value to the purchase price of the entire property. If a flat fee is charged, without regard to the purchase price, the otherwise allowable real estate expenses should not be prorated but should be paid in toto, assuming the fee is reasonable in amount and in line with other charges for similar services in the Rocky Point area. See 54 Comp. Gen. 597, 599 (1975); B-183612, August 13, 1975.

In this connection, however, Mr. Alpin's travel voucher is not supported by documentation showing that the claimed expenses were actually incurred. Until such time as Mr. Alpin submits supporting

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documentation, as required by section 4.3a of the Circular, no portion of the claim is for allowance. Moreover while certain items, such as record fees, appear to be reimbursable, others such as legal fees and gratuity, appear to be partly or wholly nonreimbursable. Therefore, when the expenses are documented they should be examined to determine whether they are reimbursable under the provisions of section 4.2 of the Circular.

The voucher is returned herewith for processing consistent with the foregoing.

~~R.F. KELLEY~~

~~Deputy~~

Comptroller General
of the United States