

Michael Hordell
Civ. Pers.

DECISION



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

FILE: B-187248

DATE: March 1, 1977

MATTER OF: Robert B. Giknis - Relocation and Travel Expenses

- DIGEST:**
1. When there is no administrative report from the concerned agency indicating the amount of expenses previously reimbursed for relocation expenses, a portion of the expense reimbursement must be withheld for Federal income tax purposes.
 2. An employee, while en route to a temporary duty station, claims additional mileage to facilitate the repair of his privately owned vehicle. The evidence submitted does not justify reimbursement of the additional expense.
 3. Where meals are obtainable at the lodging of an employee at his temporary duty station, he is not entitled to reimbursement of mileage to obtain meals at another location since special meals or desires as to services and variety are personal and not incident to official business.

This action results from the appeal by Robert B. Giknis for reconsideration of Claim Settlements Z-2610079 dated April 22, 1976, and May 18, 1976, issued by our Claims Division. Settlement dated April 22, 1976, allowed Mr. Giknis' claim for reimbursement of expenses incurred incident to the purchase of a residence at his new duty station pursuant to a change of duty station less a deduction for Federal withholding tax. Settlement dated May 18, 1976, allowed that portion of Mr. Giknis' claim which was for reimbursement of mileage from his lodging to and from his temporary duty station and 26 miles in and around his temporary duty station. That part of the claim for reimbursement of mileage to obtain meals at his temporary duty station was disallowed.

Mr. Giknis, a former employee of the Defense Contract Administration Services Office, was transferred from Marlboro,

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Massachusetts, to Burlington, Vermont, to be effective April 7, 1975. By Settlement of April 22, 1976, he was authorized reimbursement of the gross amount of real estate expenses claimed of \$436.50 less an amount of \$87.30 withheld for Federal withholding tax.

Mr. Gilnis is appealing the withholding of Federal taxes on the payment of relocation expense made by the Claims Division Settlement.

The Tax Reform Act of 1969 (Public Law 91-172, December 30, 1969) broadened the scope of moving expenses which may, for income tax purposes, be deducted under 26 U.S.C. § 217 (1970) by an employee from his gross income and for which the related reimbursement or allowance is not subject to tax withholding.

Regulations concerning withholding of Federal income taxes for Federal employees are contained in Treasury Fiscal Requirements Manual (Treasury FRM). Specifically, 3 Treasury FRM 3080.10 (March 1970), in effect at the time of the change of official station, provided that:

"TAX WITHHOLDING. An allowance or reimbursement to an employee for moving expenses paid by the employee is not subject to tax withholding if (and to the extent that) the employee may, for income tax purposes, deduct the moving expenses from his gross income. Those moving expenses which may be deducted by the employee (subject to certain conditions), and for which the corresponding allowance or reimbursement is not subject to tax withholding, are the reasonable expenses of traveling (including meals and lodging) and of moving household goods and personal effects, from the former residence to the new residence; of traveling (including meals and lodging) for the purpose of searching for a new residence; of meals and lodging while occupying temporary quarters; or constituting qualified

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residence sale, purchase, or lease expenses. The aggregate amount allowable as a deduction for the house-hunting trip and temporary quarters is \$1,000* * *. The aggregate amount allowable as a deduction for the residence sale, purchase, or lease expenses is \$2,500* * *, reduced by the aggregate amount allowable for the househunting trip and temporary quarters. Allowances or reimbursements to employees which exceed the above aggregate amounts allowable as deductions, along with reimbursements for any other moving expenses, are subject to tax withholding."

The \$436.50 for residence purchase expenses allowed by our Claims Division settlement would appear to be within the aggregate amount for which a deduction for income tax purposes would appear to be proper, and, pursuant to 3 Treasury FRM 3080.10, that amount would not be subject to tax withholding. However, in the absence of an administrative report from the concerned agency indicating the amount previously reimbursed for expenses covered by the FRM our Claims Division is required to make the withholding. See B-185024, July 9, 1976, 55 Comp. Gen. ____.

If it is determined that the taxes have been "erroneously" withheld, reimbursement may not be made because Mr. Giknis is no longer on the payroll. However, this does not leave Mr. Giknis without a remedy. The adjustment will be effected through the filing of his 1976 tax return. See 3 Treasury FRM 3020.50 (April 1970) in effect at the time Settlement was issued.

In the Settlement of May 18, 1976, Mr. Giknis objects to the denial of reimbursement concerning the additional miles traveled to and from his temporary duty station (88 miles) and mileage to obtain meals (440 miles) while at his temporary station. Mr. Giknis states that most of the extra mileage that occurred in traveling to his temporary duty station was occasioned by needed repairs to his automobile.

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Specifically, he claims that almost 50 miles additional travel was required to replace a windshield wiper blade. Although the expense of additional travel to make emergency repairs may be reimbursed under certain circumstances, the record here does not justify the additional mileage.

Mr. Giknis states that the lodging facilities at his temporary duty station were unsuitable and the eating facilities there were not of the best quality. Where an employee obtains lodging is one of personal preference and the standard test used in determining whether or not daily travel to obtain meals will be reimbursed is found in Federal Travel Regulations (FPMR 101-7) para. 1-2.3(b), May 1973. The concern is whether "the nature and location of the work at a temporary duty station are such that suitable meals cannot be obtained there. * * *" The regulation does not make any exceptions for restaurant service or variety. If an employee is not satisfied with the restaurants at or near the temporary duty station or the lodgings, then he may, at his own expense, go elsewhere. Special meals or desires as to service and variety are personal and are not incident to official business, and the employee is not subject to reimbursement of such travel expenses.

Thus, the actions of our Claims Division are sustained.

Acting  Comptroller General
of the United States

MAR 1 1977

Director, Claims Division

cc: [unclear]

Comptroller General R.F. KELLER

Robert B. Gilmer - Re-election and Travel Expenses - B-187248-O.M.

Enclosed herewith is file B-261079 forwarded for our consideration on August 18, 1976, along with our decision of today, B-187248.

Attachments



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

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The Honorable Patrick L. Leahy
United States Senator
Box 1
Burlington, Vermont 05401

Dear Senator Leahy:

Further reference is made to your interest in the claim of Robert B. Giknis for travel expenses incurred while he was attending a course in contract law at Hanscomb Field, Bedford, Massachusetts, as an employee of the Defense Supply Agency.

At Mr. Giknis' request we have reconsidered the action taken in our Certificate of Settlement dated April 22 and May 18, 1976. By decision of today, B-187248, copy enclosed, we sustained the action of our Claims Division.

Sincerely yours,

R.F. KELLER

~~Action~~ Comptroller General
of the United States

Enclosure



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

MAR 1 1977

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The Honorable Robert T. Stafford
United States Senate

Dear Senator Stafford:

Further reference is made to your interest in the claim of Robert B. Gilnis for relocation expenses.

At Mr. Gilnis' request we have reconsidered the action taken in our Certificate of Settlements dated April 22 and May 18, 1976. By decision of today, B-187248, copy enclosed, we sustained the action of our Claims Division.

Sincerely yours,

R. F. KELLEY

Acting

Comptroller General
of the United States

Enclosure