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Wm. Haubert
Civ. Pers.

DECISION



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

FILE: B-187884

DATE: February 22, 1977

MATTER OF: Stephen Vishnefsky - Real estate expenses -
Two-family dwelling

DIGEST: Transferred employee who sold two-family dwelling is entitled to full reimbursement of allowable sale transaction expenses since, due to small size of his dwelling (five rooms) and large size of family (six persons), employee used second unit for storage of his family's personal items, a reasonable residential use, rather than for rental or commercial purposes.

By a letter dated November 11, 1976, Colonel D. L. Applegarth, Office of the Comptroller, Defense Supply Agency (DSA), forwarded a letter from Major P. R. Bergeron, USA, Accounting and Finance Officer, which requests our decision regarding the claim of Mr. Stephen Vishnefsky, a DSA employee, for reimbursement of residence transaction expenses incurred incident to a permanent change of station.

The record indicates that on June 10, 1974, Mr. Vishnefsky was transferred from New York, New York, to Bridgeport, Connecticut. Incident to the transfer he sold his former residence, a two-family house located in Ozone Park, New York, and incurred transaction expenses in the amount of \$3,207.15, representing broker's fees, legal costs, termite inspection, and State transfer tax and revenue stamps. Because the Ozone Park residence was a two-family dwelling, he was administratively allowed a pro rata reimbursement in the amount of \$1,603.57, for one-half of the claimed expenses.

Mr. Vishnefsky has reclaimed the disallowed portion of his transaction expenses on the grounds that although the residence was a two-family structure, he occupied the entire dwelling. In particular, he states that since each portion of the duplex contained only five rooms, he and his family of six persons utilized one unit as living quarters and the other unit as storage area. In addition, he states that at no time was the other unit rented to a tenant. Mr. Vishnefsky's employing agency does not dispute these assertions; but rather contends that the employee's entitlement to reimbursement is limited to that portion of the duplex which is actually used as living quarters.

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Section 5724a(a)(4) of title 5, United States Code (1970), authorizes reimbursement of certain expenses incurred in connection with the sale by a transferred employee of his former residence. Implementing provisions are contained in the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973). FTR para. 2-6.1f provides in relevant part:

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

In 55 Comp. Gen. 747, 749 (1976), we held that the foregoing regulation does not necessarily contemplate the application of fixed percentage formulas whenever an employee purchases a multiple occupancy dwelling. 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 residence and living quarters and those portions of such property which are devoted, in whole or in part, to commercial or nonresidence use. 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 decisions of this Office have authorized only a pro rata reimbursement of otherwise allowable expenses when the employee has commercially utilized a portion of the premises by renting to a tenant or when the premises not occupied by the employee may be rented. See 55 Comp. Gen. 747, supra; B-163187, February 19, 1968; B-166402, May 7, 1969. In the present case, however, Mr. Vishnefsky did not rent any portion of the dwelling. Moreover, he used one of the units for storage of his family's personal items. The Supreme Court of the United States has held in Missionary Society v. Dalles, 107 U.S. 336, 343 (1882):

"To occupy means to hold in possession; to hold and keep for use; as to occupy an apartment."

In view of the fact that a significant portion of residential property is commonly and necessarily used as storage, the use by

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Mr. Vishnefsky of the other unit of his small duplex as an area for storage of his family's personal and household effects was a reasonable residential use of the property. In so using the unit, he held it in possession for his own use and that of his family, and thus occupied it. Under FTR para. 2-6.1f, pro rata reimbursement is required where an employee only partially occupies a multiple occupancy dwelling. Since Mr. Vishnefsky occupied the entire structure for residential purposes, he may be reimbursed in full for the allowable expenses incurred incident to the sale of his former residence.

Accordingly, if otherwise proper, Mr. Vishnefsky's reclaim may be paid.

Acting


Comptroller General
of the United States