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**DECISION**

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

**FILE:** B-202243

**DATE:** August 14, 1981

**MATTER OF:** Patrick T. Schluck - Temporary quarters  
subsistence expenses - Vacating residence  
at old duty station

**DIGEST:**

Employee's family joined him in temporary quarters at his new duty station for 10 days, but, due to the unexpected canceling of a contract for the purchase of a new home at his new duty station, returned to and occupied their former residence pending the purchase of another home. Since the record shows objective evidence of his family's intent to vacate their former residence when they joined him at his new duty station, the employee is entitled to temporary quarters subsistence expenses for his family under para. 2-5.2 of the Federal Travel Regulations for the 10-day period.

The issue presented is whether an employee may be reimbursed temporary quarters subsistence expenses for his family where they joined him in temporary quarters at his new duty station for 10 days, but then moved back into the family home at his old duty station pending the purchase of a new home.

Mr. Patrick T. Schluck, an employee of the Internal Revenue Service, was authorized relocation expenses, including 30 days temporary quarters, for his move from Greenville, Mississippi, to Houston, Texas. His reporting date in Houston was June 2, 1980. His family subsequently joined him in Houston where he had entered into a contract for the purchase of a house which was to be ready for occupancy sometime prior to July 15, 1980. While awaiting availability of this house, the Schluck family occupied temporary quarters in Houston for a 10-day period commencing June 24, 1980. However, on July 4, 1980, Mr. Schluck's family returned to their former residence in Greenville after Mr. Schluck canceled the contract for the house in Houston. He explained that this action was necessary because his wife discovered the house was too small to provide suitable living quarters for the family. Mr. Schluck purchased a second home in Houston on July 2, 1980. This house was not available for occupancy until August 1, 1980.

*[Request for Reimbursement of Temporary Quarters Subsistence Expenses]*

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Mr. Schluck filed a voucher for temporary quarters subsistence expenses for the period of June 24, 1980 - July 4, 1980. The Internal Revenue Service, Southeast Region, allowed temporary quarters for Mr. Schluck, but not for his family since they had not vacated the residence in Greenville.

Mr. Schluck, however, asserts that his family did vacate the Greenville residence when they joined him in Houston on June 24, 1980. He states that the Greenville residence was under contract for sale during this period and that his family, upon leaving Greenville, planned to make the house which he had previously contracted for in Houston their permanent home. Moreover, Mr. Schluck explained that on July 5, 1980, he was scheduled to return to Greenville alone to supervise the movers while his family remained in Houston.

Internal Revenue Manual (IRM) 1763, Section 551(2), which allows for payment of temporary quarters subsistence expenses only after it has been established that the employee's residence at his old duty station has been vacated is substantially identical to Paragraph 2-5.2c of the Federal Travel Regulations (FPMR 101-7, 1973) which defines temporary quarters as follows:

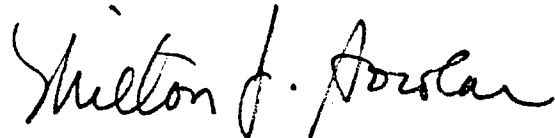
"The term 'temporary quarters' refers to any lodging obtained from private or commercial sources to be occupied temporarily by the employee or members of his immediate family who have vacated the residence quarters in which they were residing at the time the transfer was authorized."

There is no precise definition of the term "vacate" in the travel regulations and each case must be considered on its own merits. 47 Comp. Gen. 84 (1967). Therefore, in considering cases of this nature, we consistently have given substantial weight to the intent of the employee with respect to the location of permanent residence and the occupancy of temporary quarters. The inquiry generally has been whether the employee, in light of all the facts and circumstances, has manifested by objective evidence the intent to vacate the former residence. Charles C. Werner, B-185696, May 28, 1976. In applying this standard we have held that an employee was entitled to temporary

quarters reimbursement where the employee, after sale of his residence, was forced to rent his former residence from the new owner because he was unable to locate suitable temporary living quarters at either the old or new duty station. B-177965, March 27, 1973. We stated that the intent of the employee to vacate is controlling and that such intent constitutes a constructive vacating of the former residence within the meaning of para. 2-5.2c of the Federal Travel Regulations. B-177965, supra.

Under the circumstances of the present case, there can be no doubt that the return of Mr. Schluck's family to the Greenville residence after that residence was put on the market for sale, and after Mr. Schluck had entered into a contract for the purchase of permanent living quarters in Houston, was an unanticipated action, undertaken because of the unexpected canceling of the purchase contract. The return of the family to Greenville was not part of their original moving plans and, in fact, was contrary to those plans. Moreover, the record shows that, prior to canceling the home purchase contract, the Schluck family had planned to rely on Mr. Schluck alone to return to Greenville to supervise the movers.

We, therefore, conclude that the Schluck family did intend to vacate the Greenville residence when they moved into temporary quarters in Houston on June 24, 1980. Accordingly, Mr. Schluck is entitled to temporary quarters subsistence expenses for his family for the 10-day period beginning June 24, 1980.



Acting Comptroller General  
of the United States