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DECISION



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

FILE: B-202392

DATE: May 11, 1981

MATTER OF: [REDACTED] - Relocation expenses

DIGEST: Employee transferred in 1977 sold residence at old station for which he had received a Federal income tax credit in 1975, the year in which he had purchased house as a newly constructed residence. Employee may not be reimbursed amount of income tax credit recaptured under 26 U.S.C. 44(d) when newly constructed residence was sold within 36 months of purchase. Under 5 U.S.C. 5724a, reimbursement is limited to reasonable expenditures necessary to consummation of real estate transactions and the applicable regulations preclude reimbursement of costs incident to real estate sale as items of miscellaneous expense.

This action is in response to letter dated February 26, 1981, from Mr. Claude F. Pickelsimer, Jr., Director, Financial Management Branch, Center for Disease Control, Public Health Service, requesting a decision as to the propriety of making payment on a voucher in favor of [REDACTED], an employee of that agency. The \$1,743 amount in question is claimed as a reimbursable relocation expense incident to [REDACTED] transfer to Berkeley, California.

In January 1975, [REDACTED] was transferred from Riverside, California, to San Antonio, Texas. Following that transfer, he purchased a newly constructed residence in the San Antonio area and was allowed a tax credit equal to 5 percent of the purchase price in the computation of his 1975 Federal income tax. In August 1977, he was transferred from San Antonio, Texas, to Berkeley, California. He sold his home in San Antonio, but was unable to purchase a newly constructed residence in the Berkeley area within 18 months of the sale of his residence in San Antonio. The credit which he received on his 1975 Federal income tax return was subject to full recapture on his 1979 return for the reasons that he did not retain the house as his residence for the full 36 months nor did he repurchase a newly constructed home in the Berkeley area within 18 months after the sale.

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██████████ contends that had there been new homes available in his new assignment area or had he not been transferred when he did, he would not have had to repay the credit. It is his view, therefore, that the amount in question is a properly reimbursable relocation expense incident to his transfer to Berkeley, California.

Section 44 of title 26, United States Code^X (1976), authorizes a Federal income tax credit in an amount equal to 5 percent of the price of a newly constructed principal residence purchased by a taxpayer, not to exceed \$2,000. Subsection 44(d) provides for the recapture of any credit allowed if the taxpayer disposes of the residence at any time within 36 months following acquisition. However, that subsection goes on to provide that recapture is not required in certain circumstances, including those in which the taxpayer purchases or builds another newly constructed principal residence within 18 months after selling the residence for which the tax credit was granted.

In B-194860,^X October 15, 1979, we disallowed reimbursement for a tax credit which was recaptured in circumstances similar to that described in the present case. We held in that case that 5 U.S.C. 5724a(a)(4)^X limits reimbursement for expenses incurred incident to permanent change of station to those expenses reasonably necessary to consummate the real estate transaction.

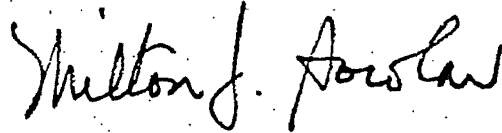
In that decision we did not discuss the recaptured tax credit in relation to the Miscellaneous Expense Allowance as authorized to be paid by 5 U.S.C. 5724a(b)⁴ and part 3 of Chapter 2^X of the Federal Travel Regulations (FTR paragraphs 2-3.1 to 2-3.4)^X. However, under those regulations at paragraph 2-3.1c(1)^X among the costs not covered (not allowable) as miscellaneous expenses are:

"Losses in selling or buying real and personal property and cost items related to such transactions * * *."
(Emphasis supplied.)

Under that regulation the recaptured tax credit is viewed as a cost item related to the sale of real estate and thus not reimbursable.

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In view of the foregoing, [REDACTED] claim is denied and the voucher accompanying the submission will be retained here.



Acting Comptroller General
of the United States