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DECISION



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

2114!

FILE: B-205237

DATE: March 15, 1982

MATTER OF: Housing Allowances - Hendon, England

DIGEST: Certain housing rents which applied to quarters occupied by United States service personnel at Hendon, England, were raised by the British Government in May 1981 retroactively to April 1, 1981. Based on a report of the increased rents, the uniformed services overseas housing allowance rates were changed June 24, 1981. Had the rent increase been announced sooner the housing allowances could have been changed earlier, but this was not an error of information or observation to authorize a retroactive increase in the housing allowance rates contrary to the general rule against retroactive changes in regulations.

This is in response to a request from the Principal Deputy Assistant Secretary of the Air Force (Manpower, Reserve Affairs and Installations), asking whether a station housing allowance authorized for United States military members assigned to the Royal Air Force Base, Hendon, England, may be retroactively increased. This request was assigned Control Number 81-24 by the Per Diem, Travel and Transportation Allowance Committee. Based on the pertinent facts set forth below, we conclude that the station housing allowance for Hendon may not be increased retroactively because it would violate the established rule against retroactive changes in regulations.

United States military personnel stationed at Hendon, who are occupying rental housing provided by the British Ministry of Defence, are eligible to receive an overseas station housing allowance authorized under 37 U.S.C. § 405 (1976). This allowance is intended to assist in defraying the average excess housing costs certain members may experience while on assignment outside the United States. Under the implementing regulations, Volume 1, Joint Travel Regulations (1 JTR), paragraph M4301 and Appendix D, the overseas housing allowances are computed by the Per Diem, Travel and Transportation Allowance Committee based on reports of housing costs submitted annually by the various overseas stations. In addition, special reports may be submitted when necessary because of significant changes in housing costs which occur between the annual reports. Based on the reports, the

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Committee recomputes the allowances and issues revised regulations to reflect occasional increases or decreases in the average local costs of housing for the various stations.

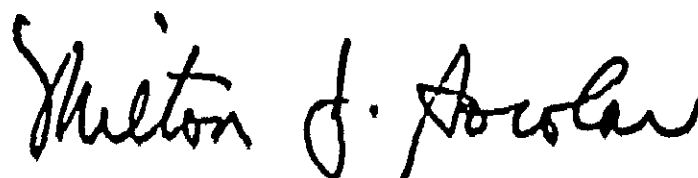
On May 21, 1981, the British Ministry of Defence notified the occupants of station housing in Hendon that rents would be increased effective retroactively to April 1, 1981. Apparently, this was in accord with the Ministry's usual practice to announce new rental rates annually in May retroactive to April 1. Upon receiving a report of the retroactive rent increase at Hendon, the Per Diem Committee included the increased rental costs as a factor to compute new station housing allowances. Owing to the administrative time required to compute and issue a regulation providing the new allowances, the new allowances did not take effect until June 1981, more than 2 months after the effective date of the rent increase. The Deputy Assistant Secretary asks whether the new housing allowance rates may be made retroactive to April 1, 1981, to cover this period.

We have consistently held that when regulations are properly issued, rights thereunder become fixed and although such regulations may be amended prospectively to increase or decrease rights given thereby, they may not be amended retroactively except to correct obvious errors. See 56 Comp. Gen. 1015, 1016-1017 (1977), and 32 Comp. Gen. 315 (1953). However, if it can be shown that a determination made was based on erroneous information or observation and thus did not represent a judgment arrived at upon a consideration of the actual circumstances involved, a retroactive amendment or application has been allowed. For example, in a case where a housing allowance for a particular station was inadvertently deleted because of erroneous information that no personnel were stationed there, we held that the allowance could be retroactively corrected to reinstate the allowance. Matter of Bruce O. Fagerland, B-192040, August 7, 1980. And, in another case where housing allowances were improperly computed based on erroneous information that a currency devaluation would have no effect on certain rents, we also authorized a retroactive correction. Matter of Housing Allowances, 56 Comp. Gen. 1015 (1977).

In this case, the original rates were apparently properly computed based on previous reports of average housing costs submitted to the Committee. Upon receiving the new reports of increased costs the Committee acted to change the housing allowances. Although the British Ministry of Defence policy of announcing rent increases after their effective date led to some

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delay in the computation of new housing allowance rates, there was no error in setting the old rates nor in setting the new rates. As is indicated above, the housing allowances are intended to help defray average costs, and they do not necessarily respond immediately to every change in housing costs, up or down. Thus, in this case we cannot conclude that the computation of the housing allowance was based on erroneous information or observation of the facts so as to allow a retroactive increase. Accordingly, the housing allowances in question may not be made retroactively effective.

for 
Comptroller General
of the United States