

# Decision

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**Matter of:** Paul D. Atkinson ✓ Real Estate Expenses - Title Requirements

**File:** B-241770.

**Date:** March 25, 1991

## DIGEST

1. A transferred employee sold his residence at the old duty station which he owned in his capacity as trustee of an inter vivos trust which he created in which he was sole beneficiary during his lifetime and in which he retained full powers of revocation. Since employee was both sole trustee and sole beneficiary, he retained all legal title and beneficial interest in the property and therefore, retained sufficient title for purposes of real estate expense reimbursement under the Federal Travel Regulations. Thus, he is entitled to receive reimbursement of real estate expenses associated with the sale of the residence.

2. In connection with the sale or purchase of a residence, a transferred employee is not entitled to reimbursement for a lawn service expense since that is a nonreimbursable routine maintenance cost. Also, where pest and home inspections were not required by law or as conditions of obtaining financing, they are not reimbursable. Costs of express mail are not reimbursable real estate expenses but may be reimbursed under the miscellaneous expense allowance.

## DECISION

The issue in this decision is whether an employee may be reimbursed the cost of real estate transaction expenses related to the sale of a residence where the employee held title to the property in his capacity as sole trustee of an inter vivos (living) trust of which he was both settlor (creator) and sole beneficiary during his lifetime and in which he reserved to himself full powers of revocation during

PUBLISHED DECISION

70 Comp. Gen. 362

057642/087799

his lifetime.<sup>1/</sup> We conclude that this meets the requirement that title to the property be in the name of the employee so as to entitle him to reimbursement of allowable real estate expenses associated with the sale of the residence at the old duty station.

We are also asked our opinion concerning the agency's determination that four specific items the employee claims as real estate expenses do not qualify for reimbursement. As explained below, we agree generally with the agency, except that one item may be reimbursable as a miscellaneous expense allowance item.

#### BACKGROUND

Mr. Paul D. Atkinson, an employee of the Department of Housing and Urban Development, was transferred from Orlando, Florida, to Jacksonville, Florida, in June 1989. Mr. Atkinson sold his residence at his former duty station. At the time of the transfer, Mr. Atkinson held title to the property in his capacity as trustee of an inter vivos trust which he created and in which he named himself sole beneficiary for his lifetime while reserving to himself full powers of revocation for life. Mr. Atkinson states that he transferred title to his revocable living trust which he created in 1986 because he was single at the time and had a potentially disabling illness.

#### TITLE REQUIREMENTS

The statutory authority for reimbursing an employee for real estate expenses for the sale of his residence incurred incident to a transfer is 5 U.S.C. § 5724a(a)(4) (1988), as implemented by the Federal Travel Regulations (FTR). Specifically, 41 C.F.R. § 302-6.1(c) requires in part that title to the residence sold must be "in the name of the employee alone, or in the joint names of the employee and one or more members of his/her immediate, or solely in the name of one or more members of his/her immediate family."

The agency's doubt in this matter arises from Carl A. Gidlund, 60 Comp. Gen. 141 (1980); affirmed, B-197781, Sept. 8, 1982, involving the reimbursement of expenses for the sale and purchase of property held in trust. There, we found that the transferred employee had not met the title requirements of the regulations and had not actually incurred the expenses in question and, therefore, was not entitled to reimbursement.

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<sup>1/</sup> The matter was presented to us for decision by the Director, Accounting Division, Atlanta Regional Office, Department of Housing and Urban Development.

In contrast to the present case, the property involved in the Gidlund case was held in the name of a pre-existing testamentary trust which paid the expenses in question. The trust had been established by the last will and testament of the employee's mother-in-law, and most importantly, it was not a living trust with full powers of revocation residing in the employee for life nor was the employee and/or a member of his immediate family the sole trustee and sole beneficiary during his lifetime. In contrast, in the present case Mr. Atkinson held the entire legal interest in the trust property, and as beneficiary had full beneficial equitable interest. Together, these interests constituted a proprietary interest entitling him to convey the trust property. Also, under the living trust created by Mr. Atkinson it is clear that it was his interest that bore the real estate expenses in selling the residence.

Given the differences between the trusts employed in the two cases, the findings and reasoning of the Gidlund case are not applicable to the determination of title involving the fully revocable living trust used by Mr. Atkinson. We conclude that Mr. Atkinson did hold title to his former residence as required by the Federal Travel Regulations. Accordingly, Mr. Atkinson is entitled to full reimbursement for otherwise allowable real estate expenses associated with the sale of his residence at the old duty station.

#### DISALLOWANCE OF CERTAIN EXPENSES

The certifying officer also requests our reaction to her decision to take exception to Mr. Atkinson's claim for a lawn service expense of \$50 incident to the sale of his old residence; express mail expenses of \$33 and \$26 incident to the sale and purchase respectively; a pest inspection fee of \$50 incident to the purchase (no mortgagee involved and not otherwise required in the state of Florida); and a home inspection fee of \$250 incident to the new home purchase.

Lawn service is considered a matter of routine maintenance of the property. The cost of routine maintenance is specifically designated as a nonreimbursable item under the regulations. FTR § 302-6.2(d)(2)(iv); see Irvin W. Wefenstette, 63 Comp. Gen. 474, at 477 (1984); Joseph F. Kump, B-219546, Nov. 29, 1985.

Express mail charges may not be reimbursed under FTR part 302-6 as expenses in connection with the sale or purchase of a residence; however, they may be reimbursed as part of the miscellaneous expense allowance authorized by FTR § 302-3.1. See Timothy R. Glass, 67 Comp. Gen. 174 at 177 (1988). Reimbursement as a miscellaneous expense would be subject to the limitations in FTR § 302-3.3.

The cost of a pest inspection is not reimbursable if it is not a requirement for the purchase or sale. FTR § 302-6.2(f); Robert E. Grant, B-194887, Aug. 17, 1979. Since no mortgagee was involved who may have required a pest inspection and the agency advises that it was not otherwise required in Florida, this expense was properly disallowed.

Finally, disallowance of the home inspection fee was proper as nothing in the record suggests that the inspection was required for the transfer of ownership interest in the property or the security interest acquired by a mortgage lender but rather the inspection appears to have been solely for the protection of Mr. Atkinson's property interest in the home. FTR § 302-6.2(f); Ronald M. Pearson, B-230402, March 23, 1988.

*Milton J. Fowler*

**Acting** Comptroller General  
of the United States

1. Civilian Personnel
  - Relocation
  - Residence transaction expenses
  - Reimbursement
  - Eligibility
  - Property titles
  
2. Civilian Personnel
  - Relocation
  - Residence transaction expenses
  - Miscellaneous expenses
  - Reimbursement