



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Furniture Rental Agreements—Option-to-Buy Clauses

File: B-259520

Date: December 7, 1995

DIGEST

An agency questions the practice of reimbursing employees stationed in foreign areas for furniture rental agreements that include option-to-buy clauses because, in many cases, the employees end up owning the furniture at the end of the contract term. The agency may reimburse employees for the expenses of such agreements if the employee has no other choice but to enter into such an agreement. However, if the employee does exercise the purchase option, the employee must return to the agency the amount of the reimbursement that is being credited toward the purchase.

DECISION

The U.S. Customs Service requests a decision regarding furniture rental agreements that include option-to-buy clauses, which the agency states is the standard commercial practice in Ottawa, Canada, where many of its employees are stationed. As discussed below, the agency may reimburse employees for payments made under these types of agreements, but the employee is not entitled to buy the furniture at the end of the contract term without returning the reimbursement for the rental payments.

BACKGROUND

Employees stationed in foreign posts are entitled to a living quarters allowance (LQA) that includes "separate rental of necessary furniture at not to exceed 25 percent of the applicable maximum annual quarters allowance rate." Standardized Regulations (Government Civilians, Foreign Areas) (SR) 131.2, Nov. 1, 1992. The statutory authority for this allowance is found at 5 U.S.C. § 5923 (1988).

To illustrate the type of contract at issue here, the agency provided the following two examples:

Example A is an 18-month lease requiring monthly payments of \$60 for a total of \$1,080. According to the lease, "The lessee shall have the option to purchase by applying 100 percent of the rental paid during the life of the contract, towards the total cost of the merchandise, plus a fee of 1 percent of the total cost of the merchandise at the end of the contract."

Example B is a 12-month lease with monthly payments of \$123.91. This lease states, "The lessee shall have option to purchase by applying 110% of the rental paid during the first year towards the purchase price (value) stipulated on present contract provided he fulfills all terms and conditions." The total value of the furniture stated on the lease is \$1293.38.

Using these types of agreements allows the employees to purchase the furniture using government funds. The agency points out that this is contrary to the stated intent of the allowance, which is to reimburse employees for the expenses of renting quarters at foreign posts. The agency asks whether reimbursement for all such agreements should be denied on the grounds that option clauses intrinsically increase the cost of the contract, or whether such reimbursement should be denied only when the employee exercises the option to purchase the furniture.

OPINION

Although we have not considered option-to-purchase clauses in the context of the State Department's Standardized Regulations, we have considered these clauses in the context of subsistence expenses for employees under the Federal Travel Regulation, issued by the General Services Administration.

In Lucius Grant, Jr., 62 Comp. Gen. 635, 637 (1983), we held that "there is no authority to include payments made on items of personal property for the purpose of eventual ownership." We see no reason to adopt a different rule here.

In both of the examples provided by the agency, the employee is being given a credit toward the purchase of furniture based on funds provided by the agency. This type of arrangement is contrary to the well-established rule that a federal employee is obligated to account for any gift, gratuity, or benefit received from private sources incident to the performance of official duty. Michael Farben, 67 Comp. Gen. 79 (1987).

The gift rule typically arises in cases involving discounts, bonuses or promotional items provided to airline travelers. The rationale for this rule is that items of value purchased with government funds belong to the government and may not be retained by the employee, absent some authority to do so. Southwest Airlines, B-254858, Nov. 22, 1995.

This rationale applies with equal force in the instant case since the credit applied to the purchase of the furniture is earned with government funds. Therefore, the credit belongs to the government, and not the employee.

We do not believe the rule described above prohibits agencies from reimbursing employees for furniture rental contracts containing purchase option clauses if, as the agency states, the employees have no other choice. It is not the option clauses themselves that violate the rule proscribing gifts to federal employees; rather, it is the conversion of the rental payments into ownership that violates the rule.

Accordingly, when an employee who has been receiving reimbursement for furniture rental expenses chooses to exercise a purchase option, the employee is obligated to return to the agency any rental reimbursements the employee received.

/s/Seymour Efros
for Robert P. Murphy
General Counsel