



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

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B-176879

November 16, 1972

Ms. Carmella J. Rizzo
Authorized Certifying Officer
Internal Revenue Service
U. S. Treasury Department
2 Penn Center Plaza
Philadelphia, Pennsylvania 19102

Dear Ms. Rizzo:

Reference is made to your letter, reference A:F:F:V, of August 17, 1972, requesting an advance decision as to certification of the enclosed voucher for \$636 in favor of Mr. Leslie W. Harper, Jr., for reimbursement of certain expenses he incurred in connection with a real estate transaction at his old official station incident to his recent transfer.

The record shows that while Mr. Harper was employed as a Department of the Air Force civilian in California he entered into a contract to purchase a residence in Sacramento, California, on August 1, 1971. He occupied that residence on August 22, 1971, under a "Use and Occupancy Agreement" which by its terms became a supplement to the agreement of purchase. Among other things the use and occupancy agreement required the purchaser to pay the sum of \$6 per day for the privilege of using the residence until settlement date. Shortly before and immediately after occupying the residence Mr. Harper contracted for certain improvements to the dwelling which included the installation of a bathroom vanity at a cost of \$65 and the installation of a fence at a cost of \$211.

Settlement on the residence was delayed and Mr. Harper apparently decided not to complete the purchase after receiving the offer of a transfer to the Internal Revenue Service in Philadelphia, Pennsylvania. He notified the seller that he was moving from the premises and the purchase transaction was terminated under the provisions of the contract for purchase as supplemented by the use and occupancy agreement. This resulted in charges to Mr. Harper of \$35 for "Credit Costs and Cancellation Fee" and \$325 for "Cleaning and Repairing Costs."

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The voucher submitted covers the costs of the improvements as noted above and the charges which resulted from termination in the total amount of \$636. Reimbursement is claimed under the provisions of 5 U.S.C. 5724a, section 4.2h, Office of Management and Budget (OMB) Circular No. A-56, revised August 17, 1971, and the implementing regulation of the Internal Revenue Service.

Mr. Harper believes the use and occupancy agreement he signed was in effect a lease and that his cancellation of the purchase agreement as a result of his transfer served to terminate his unexpired lease. Both he and the seller contemplated that the occupancy agreement would run until the settlement date which would have occurred at some point in the future had the transfer not intervened. In the circumstances we believe that the arrangements under which Mr. Harper occupied the residence may be viewed as a lease for purposes of the law and regulations involved. Further, since those arrangements were terminated prior to settlement of the purchase transaction due to the claimant's transfer, the costs involved may be considered as having resulted from the settlement of an unexpired lease under such law and regulations.

Regarding the costs claimed by Mr. Harper in connection with the settlement in question, section 4.2h of OMB Circular No. A-56 provides:

"* * * Expenses incurred for settling an unexpired lease * * * are reimbursable when (1) applicable laws or the terms of the lease provide for payment of settlement expenses, (2) such expenses cannot be avoided by sublease or other arrangement, (3) the employee has not contributed to the expense by failing to give appropriate lease termination notice promptly after he has definite knowledge of the proposed transfer, and (4) the broker's fees or advertising charges are not in excess of those customarily charged for comparable services in that locality. * * *"

The above regulation authorizes reimbursement of settlement expenses provided for by the terms of the lease. A review of the use and occupancy agreement reveals the following pertinent provisions:

"2. * * * [Lessee] further agree to pay any normal upkeep costs * * *."

"4. * * * [Lessees] hereby agree to pay * * * all costs reasonably necessary to repair damage to the premises caused by the * * * [lessee], or which occurred while the * * * [lessee] was in possession, in addition to making payment of other costs required to reimburse Owner for expenses incurred for loan applications, appraisal, and escrow fees, credit reports, etc. * * *"

Under the provisions of that agreement the credit cost and cancellation fee of \$35 meets the criteria established by regulation and reimbursement of this expenditure is authorized. On the other hand, the cleaning and repairing costs of \$325 involve costs which Mr. Harper was obligated to pay under paragraphs 2 and 4 of the agreement incident to his occupancy of the residence for normal upkeep. Costs involved in the upkeep of the residence including both cleaning and repair costs were obligations which the employee would have incurred regardless of any change of station incident to his Government service. Since such costs do not result from the termination of a lease or sale of a residence but are costs which the employee must incur for maintenance of this residence they are not considered to be reimbursable expenses incident to the sale of a residence or the termination of a lease. See B-163801, May 1, 1968, copy enclosed. Consequently reimbursement of that expenditure is not authorized.

Mr. Harper's claim for reimbursement of the cost of the fence and vanity involve expenses for improvement of the property. Neither 5 U.S.C. 5724a nor OMB Circular No. A-56 purport to authorize reimbursement of such expenditures. The fact that Mr. Harper was not able to enjoy those improvements over the period he may have contemplated and the fact that he did not recover their value through sale of the property as improved furnish no basis for allowance of these costs. Compare section 3.1c(13), OMB Circular No. A-56.

Accordingly, the voucher, which is returned herewith, may be certified for payment only in the amount of \$35 for credit cost and cancellation fee.

Sincerely yours,

E. H. Morse, Jr.

Comptroller General
of the United States