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DECISION

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

FILE: B-216777 **DATE:** April 18, 1985

MATTER OF: Charles J. Adkins

DIGEST:

> The employee may not be reimbursed $3,000 real estate expenses incurred in the sale of his home incident to his transfer. The expenses were part of the settlement costs charged to the buyer, and the employing office, with the assistance of the local office of the Department of Housing and Urban Development, determined that the seller's assumption of the buyer's obligation for such costs was not customary in the locality of the sale. Under travel regulations an employee may be reimbursed only those selling expenses customarily paid by sellers.

Charles J. Adkins, an employee of the Internal Revenue Service, is not entitled to real estate expenses he incurred upon the sale of his home at his old duty station since the costs claimed are buyer's costs which it was not customary for the seller to pay at the time and place in question.[1]

Mr. Adkins transferred from Dayton, Ohio, to Louisville, Kentucky, on March 5, 1984. He sold his home in Dayton on April 27, 1984. According to the realtor, because of the market conditions then existing, it was customary in the area of the home for the seller to pay all or a portion of the buyer's closing costs. In the realtor's opinion, the buyer would not have purchased the home had Mr. Adkins declined to pay $3,000 of the closing costs.

The employing office reimbursed Mr. Adkins the real estate broker's fee and apparently certain other selling expenses. However, the office denied Mr. Adkins the $3,000 that he paid to cover part of the buyer's closing costs because that expense failed to satisfy the legal requirement

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1/ G. Fannin, Authorized Certifying Officer, Internal Revenue Service, Central Region, requested an advance decision.

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of being a customary cost incurred by sellers in the local area of the sale. The certifying officer substantiated this determination by information from the local office of the Department of Housing and Urban Development that the payment was not customary. As legal authority for the denial, the office cited our decisions Owen C. Strickland, B-185680, August 4, 1976, and William I. Massengale, B-185863, August 25, 1976.

These decisions point out that under 5 U.S.C. § 5724a and the implementing regulations, the seller may be reimbursed certain real estate expenses to the extent they are customarily paid by sellers in the locality of the sale. Further, the custom may vary according to the type of financing obtained for the sale. The implementing regulations in effect when Mr. Adkins transferred are Federal Travel Regulations, paragraphs 2-6.2c-d and f (Supp. 4, August 23, 1982), incorp. by ref., 41 C.F.R. § 101-7.003 (1984). In a more recent decision directly relevant to the issue raised in Mr. Adkins' case, we denied reimbursement to a seller who paid settlement costs imposed on the purchaser where such payments, although reported by the real estate agent to be common in a "buyer's market," were not determined to be customary in the locality. See Burton Newmark, B-190715, March 24, 1978. Compare Christopher S. Werner, B-210351, May 10, 1983.

Finally, the employing office, with the assistance of the local office of the Department of Housing and Urban Development, has the responsibility of deciding whether, at the time of the sale, it was customary for the seller or the buyer to pay a particular item of expense, as well as determining whether the expense was within the customary amount. See FTR para. 2-6.3b-c. The certifying officer was advised by the local Department of Housing and Urban Development office that sellers did not customarily pay buyer's closing costs in the area.

Accordingly, Mr. Adkins' claim for an additional $3,000 in closing costs on the sale of his home must be denied.

Harry R. Van Cleve
for Comptroller General
of the United States