

DECISION

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

FILE: **B-185095**

DATE: **AUG 13 1976**

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MATTER OF: **Marion B. Gamble - Real estate expenses incurred
incident to lease with option to purchase**

DIGEST: **Employee reclaims expenses incurred incident
to lease with option to purchase entered into
on residence at new duty station. For purpose
of 5 U. S. C. § 5724a(a)(4) (1970) and imple-
menting regulations found at Part 6, Chapter 2,
Federal Travel Regulations, term "purchase"
has been held to require, at the least, transfer
of equitable title in property. Option to purchase
does not, in itself, give lessee any title to
property. Accordingly, expenses incurred
solely due to execution of lease with option to
purchase are not for reimbursement under
applicable law and regulations cited above.**

**This action is in response to the request dated October 6,
1975, from Glen E. Pommerening, Assistant Attorney General
for Administration, U. S. Department of Justice. Mr. Pommerening
requests an advance decision as to whether reimbursement may
be made for expenses incurred by Mr. Marion B. Gamble, an em-
ployee of the Bureau of Prisons, incident to his entering into a
lease with option to purchase on a residence at his new duty station.**

**Mr. Gamble was transferred from Englewood, Colorado, to
San Francisco, California, effective July 21, 1974. Incident to
that transfer, he attempted to purchase a residence in Foster City,
California, for \$55,000. Apparently, there was difficulty in con-
summating the purchase and Mr. Gamble entered into a lease with
option to purchase arrangement on August 29, 1974.**

**He was assessed the following charges incident to the lease
with option to purchase:**

Escrow Fee	\$109.00
Title Insurance Policy Premium	271.00
Notary Fees	4.00
Recording Fees	10.00
	<u>\$394.00</u>

**On June 12, 1975, he exercised his option to purchase and
was assessed the following charges incident to the purchase:**

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Escrow-Fee	\$109.00
Title Insurance Policy (Rewrite)	124.75
Notary Fees	4.00
Recording Fees	12.00
Credit Report	15.00
	<u>\$264.75</u>

On July 23, 1975, Mr. Gamble submitted an application for reimbursement for the total charges incurred (\$658.75) which was not certified for payment by the authorized certifying officer. A revised voucher for \$409 was approved and paid to Mr. Gamble covering the following:

Escrow-Fee	\$109.00
Title Insurance Policy	271.00
Notary Fees	4.00
Recording Fees	10.00
Credit Report	15.00
	<u>\$409.00</u>

Mr. Pommerening's letter states that the San Francisco Office, Department of Housing and Urban Development (HUD) advised that the expenses reimbursed were customary in that area for the purchase of a \$55,000 residence, and that the charges incurred under the lease with option to purchase agreement were also customary. However, he states that HUD indicated that the incurrence of duplicative charges was not customary for a normal purchase.

Mr. Pommerening requests this Office's decision as to whether the expenses incurred by Mr. Gamble incident to the lease with option to purchase agreement may be reimbursed under the applicable regulation.

Part 6, Chapter 2 of the Federal Travel Regulations (FPMR 101-7) (May 1973) provides for an allowance for expenses incurred with respect to the sale of one residence at his old official station and purchase of one dwelling at his new official station. The question presented here is whether expenses incurred incident to executing a lease containing an option to purchase may be reimbursed as arising incident to the purchase of a residence.

In our decision B-165146, September 16, 1968, we considered the problem of what constitutes a "purchase" within the meaning of

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5 U.S.C. § 5724a(a)(4) (1970), and the implementing regulations contained in FTR Part 6, chapter 2, *supra*. That decision involved the purchase of a residence under a "Land Installment Contract" under which the buyer would not obtain title to the premises until some future date. This Office determined that such transaction did constitute a purchase within the applicable authorities cited above since, notwithstanding that legal title was not transferred at the time of the execution of the contract of sale, the effect of such contract was to transfer equitable ownership of the property to the buyer. In that case, the legal title was withheld by the seller for the primary purpose of guaranteeing payment of the full purchase price of the property. We view that decision as defining the term "purchase" for the purpose of 5 U.S.C. § 5724a(a)(4), and the implementing regulations, as requiring at least the transfer of equitable title in the property.

In the instant case, the entering into a lease with option to purchase would grant Mr. Gamble no more than an equitable interest in the leased property. It would not, in itself, give the lessee any title, either legal or equitable, to the property. 51C C.J.S. Landlord and Tenant § 81(2). In fact, until Mr. Gamble exercised the option to purchase, he was under no obligation to purchase the residence at all. Accordingly, we do not believe that the execution of a lease with the option to purchase constitutes the purchase of a residence for the purpose of entitlement to the allowance for expenses incurred in connection with residence transactions under 5 U.S.C. § 5724a(a)(4), and the implementing regulations. Therefore, no expenses which were incurred by Mr. Gamble incident solely to executing the lease with option to purchase agreement dated August 29, 1974, may be reimbursed to him.

We note that incident to the purchase of the residence Mr. Gamble would have been required to incur \$271 for title insurance, regardless of the existence of the lease with option to purchase. We have been informally advised by the appropriate area office of the Department of Housing and Urban Affairs that the buyer in the San Francisco area customarily pays for title insurance. Therefore, reimbursement was properly made for the title insurance in that amount since it did not arise solely incident to the lease agreement.

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Finally, Mr. Pommerening's letter indicates Mr. Gamble was reimbursed for recording fees in the amount of \$10, which represents the amount paid incident to the lease with option to purchase. He should have been reimbursed \$12, representing recording fees incurred incident to the purchase of the residence. Thus, an additional \$2 is due Mr. Gamble.

R.F.KELLER
Comptroller General
of the United States
Deputy