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DECISION

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

FILE: B-201172 DATE: December 15, 1981

MATTER OF: Zera B. Taylor - Relocation - Tuition Forfeiture - Cooperative Apartment Carrying Charges

DIGEST:

1. Employee of Department of Housing and Urban Development who transferred from New York to Washington, D.C., in July 1978, is not entitled to reimbursement of school tuition deposit for his child's education which he forfeited when the child withdrew from school because of employee's change of permanent station. Tuition forfeiture is not within "miscellaneous expenses" reimbursable under the Federal Travel Regulations (FTR).

2. Employee transferred from New York to Washington, D.C., in July 1978, claims relocation expenses in the form of carrying charges deducted from his equity refund in connection with the sale of his cooperative apartment. In the absence of evidence clearly establishing different arrangement, we will consider an interest in a cooperatively owned apartment building to be a form of ownership in a residence for which real estate expenses may be reimbursed as provided under the Federal Travel Regulations (FTR). Since carrying charges in a cooperative usually contain items such as interest and principal payments on the mortgage, insurance, utilities, cost of management and maintenance, they cannot be considered a cost incident to the sale of a residence for which reimbursement is authorized under the FTR.

3. Expenses for repairs, maintenance, cleaning, and painting in connection with owner's sale of cooperative apartment may not be allowed as reimbursable relocation expenses under paragraph 2-6.2d of the FTR. Claim for stock

transfer tax may be allowed under this authority.

Ms. Lena M. Jones, an authorized certifying officer with the Department of Housing and Urban Development (HUD), has asked us to determine whether Mr. Zera B. Taylor may be reimbursed for a forfeited school deposit as well as for certain expenses incurred in the sale of a cooperative apartment. These costs were sustained in connection with Mr. Taylor's transfer of official duty station from New York, New York, to Washington, D.C., in July of 1978.

FORFEITED SCHOOL DEPOSIT

Mr. Taylor's child attended a private school in New York which required a deposit in advance of the next school year as a condition of enrollment. Mr. Taylor paid a $500 deposit for the 1978-1979 school year, but did not claim a return of the deposit before June 15, 1978, the school's cut-off date for a refund. He therefore forfeited the amount of the deposit when the child left the school upon his transfer.

We have held that forfeiture of tuition incident to a transfer is not the kind of expense considered reimbursable as "miscellaneous expenses" under paragraph 2-3.1b of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973). John A. Lund, Jr., B-192471, January 17, 1979. Since there is no existing provision in the law or the applicable travel regulation which contemplates reimbursement for a forfeited school deposit in these circumstances, Mr. Taylor's claim for such an expense is denied.

COOPERATIVE APARTMENT CARRYING CHARGES

A. GENERALLY

Mr. Taylor claims a total of $1,380.96, representing carrying charges due through March 7, 1979, on his cooperative apartment in New York City. This amount was deducted by the housing corporation from the refund of equity paid to Mr. Taylor on May 4, 1979.

Our first concern is whether Mr. Taylor's relationship to the residence is that of an owner-cooperator claiming

miscellaneous real estate transaction expenses under paragraph 2-6.2d of the FTR, or that of a renter-lessee claiming lease termination expenses under paragraph 2-6.2h of the FTR. Our case law precedents provide some divergent interpretations on the essence of cooperative apartment arrangements which we shall resolve here.

In one approach represented by our decisions B-178013, May 29, 1973, followed by B-179979, March 7, 1974, we have held that participating in a cooperative apartment and maintaining an equity interest in a particular housing corporation did not require that the employee be treated as an owner of the residence within the meaning of the entitlement authorities. Rather, we held that, for purposes of reimbursing the employee, the cooperative apartment arrangement should be treated as a lease because the occupancy agreements and other evidence were for specified limited periods, had the features of a lease, and the parties were referred to as the lessor and lessee. As a result, costs of settling an unexpired lease at the employees' duty station incident to official transfers were reimbursable in accordance with paragraph 2-6.2h of the FTR.

More recently, however, our approach has consistently viewed cooperative apartment arrangements as vesting purely ownership interests in connection with the employee's relationship with the cooperative unit. Thus, where the employee claiming reimbursement does not specifically claim and adequately document that the cooperative arrangement is predominantly a lease relationship, we treat the employee's interest as one of ownership.

For example, in B-177947, June 7, 1973, an employee claimed reimbursement for carrying charges in connection with the sale of a membership in a cooperative housing project. The membership entitled the employee to occupy one of the units in the project as a residence. Our review of the record indicated that carrying charges required to be paid to the cooperative by the employee were his share of the cooperative's expenses for the period after he was transferred until the settlement date for the sale. We held that the expenses of the cooperative included in the carrying charges are items such as interest and principal payments on the mortgage, insurance, utilities, cost of management, and maintenance.

Regardless of the form of ownership held in a residence, expenses of this type cannot be considered a cost incident to the sale of a residence for which reimbursement is authorized under controlling regulations.

This "pure ownership" rationale was firmly established as precedent in our decisions in Royce R. Newcomb, B-183812, May 4, 1976; and Virginia M. Armstrong, B-188265, November 8, 1977, where we held that an interest in a cooperatively owned building, which is specifically referred to in paragraph 2-6.1c of the FTR, is a form of ownership in a residence for which real estate expenses may be reimbursed as provided for in paragraph 2-6.2.

In the most recent statement of this "pure ownership" approach, Irwin Kaplan, B-190815, March 27, 1978, the employee transferred to a new duty station and claimed rent which he paid for a period after he vacated a cooperative apartment. We held that the employee's interest in the cooperative apartment was that of an owner, thus precluding consideration of the payments as lease termination expenses under paragraph 2-6.2h of the FTR. We also stated that there was no basis for payment of Mr. Kaplan's claim for "rent" as a miscellaneous expense under para. 2-6.2f of the FTR since the charge did not appear to be one customarily paid by the seller of a residence at the old official station. Rather, the charge was analogous to the mortgage payment the seller of a residence pays after he has vacated his residence but before he has gone to settlement.

B. Mr. TAYLOR'S CASE

In essence Mr. Taylor contends that under his cooperative arrangement he was both an owner and a lessee. He owned capital stock in the housing corporation which owned and operated the apartment building. At the same time he leased his own apartment from the housing corporation and made monthly payments characterized as rent under the following excerpt from paragraph 3 of the Subscription Agreement:

> "(3) The Subscriber hereby applies for a non-proprietary lease of the aforesaid apartment, which lease will fix the payments on

> account of rent to be made thereunder * * *. After thirty (30) days' notice by the Housing Company to the effect that the apartment is available for occupancy, or upon acceptance of occupancy by the Subscriber, whichever is earlier, the Subscriber shall make a payment for Carrying Charges covering the unexpired balance of the month. Therefore, the Subscriber shall pay Carrying Charges in advance on the first day of each month."

However, without the actual Occupancy Agreement, By-Laws of the corporation, or other evidence more fully documenting the nature of Mr. Taylor's equity interest, we are not persuaded that the limited evidence offered in support of Mr. Taylor's contention shows that the cooperative arrangement was predominantly a lease relationship. Hence, under Irwin Kaplan, cited above, and our other recent cases on this subject, we will treat Mr. Taylor's interest in the cooperative apartment as one of ownership.

In an effort to augment the administrative record we contacted the Department of Housing and Urban Development and requested its views on the nature of carrying charges in connection with cooperative apartments. The department forwarded a copy of the Housing and Urban Development Model Form of Occupancy Agreement for housing cooperatives (FHA Form No. 3237, Revised September 1970). In accordance with this document "Monthly Carrying Charges" include but are not limited to the following items:

> "(a) The cost of all operating expenses of the project and services furnished.
>
> "(b) The cost of necessary management and administration.
>
> "(c) The amount of all taxes and assessments levied against the project of the Corporation or which it is required to pay, and ground rent, if any.
>
> "(d) The cost of fire and extended coverage insurance on the project and such other insurance as the Corporation may effect

or as may be required by any mcrtgage on the project.

"(e) The cost of furnishing water, electricity, heat, air conditioning, gas, garbage and trash collection and other utilities, if furnished by the Corporation.

"(f) All reserves set up by the Board of Directors, including the general operating reserve and the reserve for replacements.

"(g) The estimated cost of repairs, maintenance and replacements of the project property to be made by the Corporation.

"(h) The amount of principal, interest, mortgage insurance premiums, if any, and other required payments on the hereinafter-mentioned insured mortgage.

"(i) Any other expenses of the Corporation approved by the Board of Directors, including operating deficiencies, if any, for prior periods."

This listing is consistent with our decisions construing carrying charges in a cooperative as usually containing items such as interest and principal payments on the mortgage, insurance, utilities, cost of management and maintenance. As a result, on the basis of the record before us, expenses of the type represented by his claim for carrying charges cannot be considered a cost incident to the sale of a residence for which reimbursement is authorized under chapter 2, Part 6 of the FTR. Accordingly, Mr. Taylor's claim for carrying charges is denied.

STOCK TRANSFER TAX

Mr. Taylor claims $2.95 for a "stock transfer tax." Under paragraph 2-6.2d of the FTR, transfer taxes and similar fees and charges are reimbursable with respect to the sale of a residence if such cost is customarily incurred. In Mr. Taylor's case this expense was incurred to transfer his equity interest in the housing corporation and was occasioned directly by his official change of station. This is an example

of an expense entitlement directly related to Mr. Taylor's ownership interest, and may be reimbursed accordingly.

REPAIRS, MAINTENANCE, ETC.

Mr. Taylor claims itemized expenses for repairs, maintenance, cleaning and painting in connection with his vacating his cooperative apartment incident to his official transfer. These expenses may not be allowed.

Under paragraph 2-6.2d of the FTR, operating and maintenance expenses are not reimbursable in connection with the sale of a residence. And, since such charges for reconditioning of a cooperative apartment are maintenance costs which are expressly precluded by paragraph 2-6.2d of the FTR, they may not be reimbursed as part of the miscellaneous expense allowance. See Irwin Kaplan and FTR para. 2-3.1c.

for Milton J. Socolar
Comptroller General
of the United States