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

**FILE:** B-215244 **DATE:** November 13, 1984

**MATTER OF:** John A. Byrd - Real Estate and Transportation of Household Goods Expenses

**DIGEST:**

1. A transferred employee attempted to personally sell his residence at his old duty station and incurred advertising expenses. Because he was unsuccessful, he placed the sale in the hands of a real estate agent, who did sell the property. A commission paid to the agent on that sale was reimbursed to the employee, but prior advertising costs were disallowed. On reclaim, the disallowance is sustained. When a separate advertising cost is incurred which does not result in the sale of a residence, para. 2-6.2 of the Federal Travel Regulations (FTR) precludes reimbursement.

2. A transferred employee owned a residence on a 10-acre tract at his old duty station. In order to facilitate sale, the property was divided into two parcels and sold to two separate buyers. Real estate expenses of parcel containing the residence were reimbursed to employee, but expenses associated with parcel not containing the residence were disallowed. On reclaim, the disallowance is sustained. When separate purchasers of divided property are involved, a parcel of land other than that upon which the residence is situated is not considered as being reasonably related to the residence as required by FTR para. 2-6.1f.

3. A transferred employee shipped household goods under the actual expense method. The goods weighed

> in excess of the maximum allowable. Under FTR para. 2-8.3b(5), the employee is liable for excess weight and delivery costs as a percentage of the total expenses associated with that shipment, based on the ratio of the excess weight to the total weight of the goods shipped. These regulations have the force and effect of law and may not be waived or modified, regardless of circumstances.

This decision is in response to a request from an authorized certifying officer, Internal Revenue Service, Southwest Region, Department of the Treasury. The matter concerns the entitlement of one of its employees, Mr. John A. Byrd, to be reimbursed certain relocation expenses and excess weight and delivery charges for his household goods shipment incident to a permanent change-of-station transfer in August 1982. For reasons set forth below, we hold that Mr. Byrd may not be reimbursed for the advertising or closing costs on the parcel of land not containing his residence, and he is liable for the charges for excess weight of household goods with the modification of the computation set out below.

## BACKGROUND

Mr. Byrd, an employee of the Internal Revenue Service, Southwest Region, was transferred from Dallas, Texas, to Durango, Colorado, effective August 23, 1982. At that time, he owned and occupied as his residence a house on 10 acres of land in Canton, Texas. Immediately following receipt of notice of his impending transfer, he attempted to sell his home and all surrounding property without the assistance of a real estate agent. As a result, he incurred advertising expenses in the amount of $211.62. Because he was unsuccessful, he listed the property with a real estate agent. In order to facilitate the sale, the real estate agent divided the property into two parts. The first part was a 2.136-acre parcel containing Mr. Byrd's residence. The second parcel was all of the remaining acreage. Both parts were sold on or about August 22, 1983, to two separate buyers.

Mr. Byrd was reimbursed for the real estate expenses incurred incident to the sale of the 2.136-acre parcel, but the expenses of selling the second parcel were disallowed, based on our decision B-171493, February 2, 1971. In addition to that disallowance, the agency also disallowed reimbursement for the advertising expenses incurred by Mr. Byrd prior to placing the property in the hands of the real estate agent. This disallowance was based on provisions of the Internal Revenue Manual (IRM), 1763, section 593(1)(b); paragraph 2-6.2b of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR); and 46 Comp. Gen. 812 (1967). Mr. Byrd has disputed the disallowance of those two items.

The third expense item in dispute is the charge assessed against Mr. Byrd for the excess weight of his household goods shipment and extra delivery expense incurred. Based on provisions in the IRM and our decision B-199780, February 17, 1981, the agency determined that the excess weight and delivery charges owed by him were $548.49. Mr. Byrd determined by his own computation that he owed only $315.22, from which he deducted $25 for damages claimed to have been done to his personal property by the movers and reimbursed the agency $290.22. The agency not only disagrees with his computation, but claims that any such loss or damage claim which he had must be made against the moving company.

## DECISION

### Advertising expenses

Paragraph 2-6.2 of the FTR, which governs reimbursable and nonreimbursable real estate expenses, provides:

> "a. Broker's fees and real estate commissions. A broker's fee or real estate commission paid by the employee for services in selling his residence is reimbursable, but not in excess of rates generally charged * * * in the locality of the old official station. * * *

"b. Other advertising, selling, and appraisal expenses. Costs of newspaper, bulletin board, multiple-listing services and other advertising for sale of the residence at the old official station are reimbursable if the employee has not paid for such services in the form of a broker's fee or real estate agent's commission. * * *."

In our decision 46 Comp. Gen. 812 (1967), we considered a situation similar to that involved in the present case, where the employee incurred advertising expenses in an unsuccessful attempt to personally sell his residence before securing the services of a broker. We ruled there that where an employee is reimbursed a broker's fee or real estate commission in connection with the sale of his residence, which fee includes advertising costs, any other advertising expenses incurred by the employee may not be reimbursed. See also B-178531, July 16, 1973.

While Mr. Byrd has asserted that his purpose for attempting to sell his residence himself was to save himself and the Government the commission expense, the focus of the quoted FTR provisions is the reimbursement of expenses incurred in the successful selling of a residence. Since the real estate commission charged for the consummation of the residence sale apparently included advertising expenses, there is no basis upon which additional advertising expenses may be allowed in the present case.

Residence sale expense

Paragraph 2-6.1f of the FTR provides in part:

"f. Payment of expenses by employee-pro rata entitlement. * * * The employee shall also be limited to pro rata reimbursement when he/she sells or purchases land in excess of that which reasonably relates to the residence site."

sold in two parts to separate purchasers, it was done in that manner only to facilitate the sale, and both tracts were sold at the same closing.

In our decision 54 Comp. Gen. 597 (1975), we set forth guidelines for use by agencies to determine the amount of property which "reasonably relates to the residence site" for which reimbursement of real estate expenses may be made. These guidelines, while not exhaustively stated therein, include examination of zoning laws appraisal by experts and consideration of the location and topography of the land, as ways of establishing reasonableness of the property size being sold.

In B-171493, February 2, 1971, we concluded that where an employee divided his property into separate parcels for sale, the parcels other than the lot on which the house was situated did not relate to the residence site. In a line of decisions following 54 Comp. Gen. 597 (1975), we recognized that where separate parcels were conveyed to an individual purchaser, the existence of separate transactions gave rise to the rebuttable presumption that the parcel not containing the residence was excess, thus warranting consideration of the factors discussed in 54 Comp. Gen. 597 (1975). For example, in William C. Sloane, B-190607, February 9, 1978, we considered a claim of an employee who sold a 2-acre parcel on which the residence was situated and 3 days later sold the adjacent 5-acre parcel to the same buyer. Based on the considerations outlined in 54 Comp. Gen. 597, the agency determined that a first parcel was deemed an adequate building site in the area and that the remaining property sold could be developed separately for residential purposes. We sustained the agency determination and concluded that only the commission on the parcel of property containing the residence was reimbursable. In W. Carl Linderman, 60 Comp. Gen. 384 (1981), the presumption arising from the sale of property in two parcels was rebutted based upon the factors set out in 54 Comp. Gen. 597 (1975).

In cases where the separate parcels are sold to separate purchasers, the analysis set out in 54 Comp. Gen. 597 (1975), will generally lead to a finding that the lot

without the residence is excess. See Franklin J. Rindt, B-199900, February 10, 1981, and Harold J. Geary, B-188717, January 5, 1978. While the "presumption of excess" analysis was not explicitly applied in these cases, the results would have been the same if it had been used.

In the present case, both the 2.136-acre parcel containing the house as well as the remaining acreage satisfied the minimum lot size as a residential site. Since each parcel was sold to a separate purchaser, the situation in the present case is indistinguishable from that in the Rindt and Geary cases. Therefore, we concur with the agency determination that the parcel without the house was excess and that the expenses related to its sale were not reimbursable.

Excess weight and delivery charges

The version of paragraph 2-8.2a of the FTR, in effect during the period in question provided that the maximum weight allowance for household goods authorized for employees with immediate families was 11,000 pounds.[1/] When the actual expense method of shipment is used, paragraph 2-8.3b(5) prescribes the procedure to be followed in determining the charges payable by the employee for the excess weight. That paragraph states:

> "(5) Excess weight procedures. When the weight of an employee's household goods exceeds the maximum weight limitation, the total quantity may be shipped on a Government bill of lading, but the employee shall reimburse the Government for the cost of transportation and other charges applicable

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1/ That maximum weight limitation was increased to 18,000 pounds, effective November 14, 1983. See General Services Administration Bulletin FPMR A-40, Supplement 10, March 13, 1984.

to the excess weight, computed from the total charges according to the ratio of excess weight to the total weight of the shipment."

In our decision Brown and Schmidt, B-199780, February 17, 1981, reconsidered and affirmed in William A. Schmidt, Jr., B-199780, April 8, 1982, we stated that when the actual expense method of shipment is used, the excess weight charge computation provided in the above paragraph is predicated on the actual net excess weight as a percentage of the total charges for the shipment. Charges that would be assessed even if the shipment did not exceed the limitation are to be included in the total charges. Citing to Ronald E. Adams, B-199545, August 22, 1980, we further stated therein, that the FTR's have the force and effect of law and may not be waived or modified regardless of the existence of any extenuating circumstances.

As the foregoing relates to Mr. Byrd's case, we find the agency's computation method as well as Mr. Byrd's computation method to be in error. The actual weight of Mr. Byrd's household goods which were shipped totaled 12,980 pounds, or 1,980 pounds over the maximum allowable. The total cost of that shipment, including storage and delivery charges, was $3,331.21. This results in an excess weight charge of $508.15, computed as follows:

$$\frac{\text{excess weight}}{\text{total weight}} = \text{ratio}$$

total charges x ratio = employee's share

$$\frac{1,980}{12,980} = 0.1525423$$

$3,331.21 x 0.1525423 = $508.15

With regard to the agency statement that Mr. Byrd improperly claimed a $25 credit from the payment he made for damage to his personal property, we concur. The provisions of FTR paragraph 2-8.2e and IRM 1763, section 564,

provide that the limitations on the Government's liability for loss or damage are contained in the Military Personnel and Civilian Employees' Claims Act of 1964 (31 U.S.C. § 3721 (1982)). In situations where the Government is not responsible for the loss and damage, the employee is to seek redress from the one who allegedly caused the loss. In this case, if fault exists, it would be the carrier.

In summary, Mr. Byrd is not entitled to be reimbursed for the expense of advertising the sale of his residence and is not entitled to be reimbursed for the real estate expenses which relate to the sale of the parcel of land which did not contain his residence. He is, however, only to be charged $508.15 for the cost of excess weight and extra delivery and may not be credited the $25 for his loss or damage to his shipment. Since he has already paid $290.22, recovery of an additional $217.93 is to be sought from him.

Milton J. Socolar
for Comptroller General
of the United States