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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Peter Lalic - Temporary Quarters Subsistence
Expenses - Rental from Co-Employee
File: B-227430
Date: March 14, 1989

DIGEST

1. A transferred federal employee rented a furnished condominium apartment at his new post of duty from another employee for use as temporary quarters while his new permanent residence was under construction. The lessor's rental of his property is unrelated to his official duties and does not result in additional pay or allowances under 5 U.S.C. § 5536. 7 Comp. Gen. 348 (1927) overruled.

2. A transferred federal employee rented a furnished condominium apartment at his new post of duty from another employee for use as temporary quarters while his new permanent residence was under construction. Reimbursement is permissible for noncommercial lodgings if the charges are reasonable and result from expenses incurred by the other party. Hence, in this case the transferred employee may be allowed full reimbursement of the rent he paid based on information showing that the rent was less than the cost of commercial lodgings and was reasonably related to the actual expenses incurred by the other employee in the arrangement.

DECISION

This is in response to a request for an advance decision from the Internal Revenue Service (IRS), regarding the claim of Mr. Peter Lalic for additional temporary quarters subsistence expenses.^{1/} We conclude that his claim should be allowed.

^{1/} The request was made by G. Fannin, Authorized Certifying Officer, IRS Central Region, Cincinnati, Ohio.

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BACKGROUND

Mr. Lalic, an IRS employee, was transferred from Washington, D.C., to Detroit, Michigan, effective September 15, 1986. He and his family moved to Detroit at the same time another IRS employee, Mr. David Palmer, was assigned away from Detroit to participate in an IRS executive management program. Mr. Palmer was scheduled to be away from Detroit for at least 6 months starting the second week in September.

Mr. Lalic was authorized 120 days of temporary quarters subsistence expenses while his new permanent residence in Michigan was under construction. Mr. Palmer's home, a furnished condominium apartment, was located near the place where Mr. Lalic's permanent home was being constructed. An agreement was reached under which Mr. Lalic rented Mr. Palmer's apartment from September 14, 1986, to January 10, 1987. At the end of that period, Mr. Palmer reportedly rented his apartment to another party, but the circumstances and terms of that rental agreement are not described.

Although no written lease was entered into, Mr. Lalic paid a monthly rental fee to Mr. Palmer for the exclusive use of his apartment. The fee was based on the following amounts:

Monthly mortgage payment (principal, interest and taxes)	\$560.00
Monthly condominium association fee	\$100.00
Estimated utilities (gas, electric, telephone, cable television, and soft water)	\$290.00
Insurance	\$ 25.00
Rental of furniture and furnishings	\$125.00
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TOTAL	\$1,100.00

Mr. Lalic submitted a claim for temporary quarters subsistence expenses which was denied in part by the IRS. The IRS allowed payment for his food and laundry expenses, but disallowed reimbursement of his lodging expenses. The IRS based its denial on Comptroller General decisions limiting the scope of reimbursement for temporary quarters subsistence expenses in situations involving the use of non-commercial lodgings, and the rental of lodgings by

one government employee to another. Mr. Lalic submitted a second claim for reimbursement of his lodging expenses, and the IRS then referred the matter here with a request for our decision on the propriety of paying those expenses.

OPINION

Rental Agreements Between Federal Employees

In 7 Comp. Gen. 348 (1927) we stated that reimbursement to the wife of an employee of rent paid at a commercial or business rate to the benefit of another government employee was prohibited by section 1765, Revised Statutes. This statute, as codified, today appears in substantially the same form in 5 U.S.C. § 5536 (1982) as follows:

"An employee or a member of a uniformed service whose pay or allowance is fixed by statute or regulation may not receive additional pay or allowance for the disbursement of public money or for any other service or duty, unless specifically authorized by law and the appropriation therefor specifically states that it is for the additional pay or allowance."

We have not followed 7 Comp. Gen. 348 in subsequent decisions. Instead, without referring to that case, we have allowed reimbursement of fees paid by one employee to another for the rental of quarters. Thus, in Jerome R. Serie, 65 Comp. Gen. 287 (1986), we held that the rental of temporary quarters by one employee to another may be allowed to the extent that the charge is reasonably related to the actual expenses incurred by the employee furnishing the quarters. In other cases, we have held that 5 U.S.C. § 5536 does not apply to other transactions which are not related to the employee's service or duty. 22 Comp. Gen. 943 (1943); B-37736, May 29, 1944.

As suggested by the decisions above which post date 7 Comp. Gen. 348, we are now of the view that an employee's rental of property to another employee is an independent matter unrelated to the employee's official duties which should not be regarded as resulting in "additional pay or allowance . . . for any other service or duty . . ." within the meaning of 5 U.S.C. § 5536. Accordingly, we hereby expressly overrule 7 Comp. Gen. 348 (1927).

Rental of Non-Commercial Lodgings

Under 5 U.S.C. § 5724a(a)(3) (Supp. I 1983), transferred government employees may be paid subsistence expenses incurred while occupying temporary quarters at their new post of duty for periods of up to 120 days. Temporary quarters may be either commercial or non-commercial in nature, and in both cases payment is limited to actual expenses, reasonable in amount. Federal Travel Regulations, para. 2-5.2c and 2-5.4a, incorp. by ref., 41 C.F.R. § 101-7.003.

When deciding what amounts are reasonable under these provisions of statute and regulation, we have made a distinction between commercial and non-commercial temporary quarters. As we said in Jerome R. Serie, 65 Comp. Gen. 287, 289 (1986):

"Regardless of the character of the relationship between the employee and his host we have consistently held that claims involving noncommercial lodgings should be supported by information indicating that the lodging charges are the result of expenses incurred by the party providing the lodging. 55 Comp. Gen. 856 and Constance A. Hackathorn, B-205579, June 21, 1982."

In the present case, since Mr. Palmer normally used the condominium apartment as his own residence and did not routinely or customarily offer it for rent to members of the general public, reimbursement of the rental fee paid by Mr. Lalic may be allowed only to the extent that it was reasonably related to the actual expenses incurred by Mr. Palmer.

Mr. Lalic has presented documentary information showing that the rental fees he paid to Mr. Palmer were substantially less than the costs of comparable commercial lodgings in the same area. Furthermore, it appears that the rent charged by Mr. Palmer was based primarily on the actual expenses incurred by him in paying the mortgage costs, condominium fees, and insurance and utility charges associated with the maintenance of the residence. Also, the additional monthly furniture rental fee of \$125 appears to us to have been a reasonable amount to defray Mr. Palmer's necessary expenses associated with anticipated normal wear and tear on his household furnishings during the rental period.

We note further that Mr. Lalic and Mr. Palmer did not occupy the residence jointly, but rather that the Lalic family had exclusive occupancy. Consequently, unlike cases involving joint residency, in this case there is no apparent need to determine what "additional" expenses, if any, are attributable to the Lalic family's use of the residence. Compare, Jerome R. Serie, *supra*, 65 Comp. Gen. at 289, and Clarence R. Foltz, *supra*, 55 Comp. Gen. at 857-858. Instead, it is our view that in this case it has been shown that all of the rental fees paid by Mr. Lalic were reasonably related to the actual expenses incurred by Mr. Palmer in providing the residence for the exclusive use of the Lalic family.

Accordingly, we allow Mr. Lalic's claim in full.

for 
Comptroller General
of the United States