



The Comptroller General  
of the United States

Washington, D.C. 20548

Reich

## Decision

**Matter of:** Roger O. Laws - Temporary Quarters Subsistence  
Expenses - Vacating Old Residence

**File:** B-230403

**Date:** May 19, 1989

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### DIGEST

Pursuant to a permanent change of duty station, an employee and spouse moved into temporary quarters at the employee's new duty station. Seven weeks later they returned to their former residence for 9 days primarily to pack up furniture, following which they returned to the new duty station. The agency denied temporary quarters subsistence expenses (TQSE) of the spouse for the 7-week period following the transfer on the basis that the house at the old duty station had not been vacated. We find that the employee and his spouse did intend to vacate the old residence, and their return for a short and definite period to pack up furniture did not adversely affect the employee's entitlement to TQSE for the spouse.

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### DECISION

An authorized certifying officer of the Internal Revenue Service (IRS)<sup>1/</sup> seeks an advance decision regarding an employee's claim for temporary quarters subsistence expenses (TQSE) for his wife. The question presented is whether their return to the former residence for a 9-day period after 7 weeks at the new duty station showed that they in fact had not vacated the former residence. As will be explained below, we conclude that they had vacated the former residence and the employee is entitled to TQSE for her for the 7-week period.

### FACTS

In October 1986, the employee, Mr. Roger O. Laws, was authorized to transfer from Troy, Michigan, to Cincinnati, Ohio, and was authorized TQSE for himself and his wife. On

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<sup>1/</sup> G. Fannin, Central Region, IRS, Cincinnati, Ohio.  
Reference: RM:F:A:AUD.

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November 2, 1986, he and his wife left Troy and commenced occupancy of temporary quarters in Cincinnati. Mr. Laws, accompanied by Mrs. Laws, returned to Troy on December 20, 1986, and occupied the former residence through December 28. According to Mr. Laws, the return to the former residence was necessary to finish packing and arrange for their household effects to be picked up for storage at government expense. Mr. Laws readily admits that although he and his family had vacated the residence, he had not shut off the utilities. He explains that it was the middle of winter in Michigan and "the house had not sold and the relocation service had not completed their purchase procedures." The furniture was packed and moved into storage, and he and his wife stayed with friends from December 29 until they returned to Cincinnati on January 1, 1987.

Following his stay in temporary quarters, Mr. Laws filed a claim for reimbursement of his and his spouse's TQSE. Based on the return trip to the former residence in December, the IRS concluded that Mrs. Laws had not vacated the Michigan residence until she returned to Ohio with Mr. Laws on December 31, 1986. Consequently, the IRS disallowed TQSE for her expenses for any period prior to December 31, 1986.

#### Discussion

The authority to reimburse transferred employees for TQSE is found in 5 U.S.C. § 5724a(a)(3); specific regulations promulgated under this authority are contained in chapter 2, part 5 of the Federal Travel Regulations (FTR).<sup>2/</sup>

The Federal Travel Regulations, para. 2-5.2(c) (Supp. 10, March 13, 1984), define temporary quarters as "lodging obtained from private or commercial sources for the purposes of temporary occupancy after vacating the residence occupied when the transfer was authorized." The term "vacate" is not defined in the FTR. We have held that each case must be considered on its own merits and that great weight should be given to the intent of the employee. Patrick T. Schluck, B-202243, Aug. 14, 1981. We generally consider a residence to be vacated when an employee or his family ceases to occupy it for the purposes intended. In determining whether an employee and his family have ceased to occupy a residence we examine their actions prior to or after departure from the former residence. If those actions support an inference

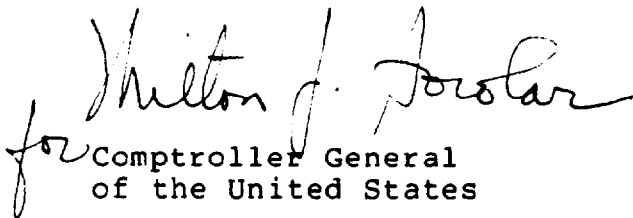
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<sup>2/</sup> Incorp. by ref., 41 C.F.R. § 101-7.003 (1988).

that the employee or his family intended to cease occupancy of the residence, we generally have authorized reimbursement. Ernesto L. Montoya, B-228623, Jan. 4, 1988; John O. Randall, B-206169, June 16, 1982.

In the present case, we view the facts as establishing that Mr. and Mrs. Laws intended to vacate the former residence. We recognize that if an employee keeps his household effects at the former residence, an inference can arise that the employee or a family member intended to return; however, such an inference is most likely to arise when the family member stays at the new duty station a short time and then returns to the former residence for an extended or indefinite time period. See e.g., John M. Mankat, B-195866, Apr. 2, 1980. Here, it appears that Mr. and Mrs. Laws returned to the former residence for a short and definite period for the purposes of packing up household effects. The fact that an employee keeps his effects in the former residence and plans to return to pack up does not create an inference that the former residence has not been vacated. See generally Quinea D. Minton, B-218866, Mar. 24, 1986; Patrick T. Schluck, B-202243, supra.

Accordingly, based on the facts of this case, we conclude that Mr. and Mrs. Laws intended to vacate the former residence and primarily returned only to pack up their household effects for storage. Therefore, Mr. Laws is entitled to TQSE for his wife upon her moving to the new duty station with him on November 2, 1986.<sup>3/</sup>

  
for Comptroller General  
of the United States

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<sup>3/</sup> The agency correctly disallowed all TQSE for both Mr. and Mrs. Laws for the days they were in Troy and our conclusion is not meant to alter this. See FTR, para. 2-5.2(d) (Supp. 10, March 13, 1984).