



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Edward R. Esparza - Relocation Miscellaneous
Expenses - Cost of Purchasing Leased Automobile

File: B-232394

Date: October 6, 1989

DIGEST

An employee on permanent change-of-station transfer from Colorado to Puerto Rico incurred early termination fees incident to his termination of a lease and purchase of the automobile pursuant to an automobile lease agreement where the lease prohibited taking the car out of the continental United States. The claim for reimbursement is denied since Federal Travel Regulations (FTR) paragraph 2-6.2h, which authorizes reimbursement of the cost of settling an unexpired lease, applies only to leases on residences, not automobiles. Also, FTR paragraph 2-3.1(c)(1) specifically excludes from miscellaneous expense coverage losses and costs incurred in selling or buying personal property.

DECISION

This is in response to a request for a decision from Mr. David R. Petak, Chief, Accounting Branch, Food and Drug Administration, Department of Health and Human Services. Mr. Petak asks whether he may reimburse an employee, Mr. Edward R. Esparza, for automobile lease termination charges pursuant to transfer of permanent duty station. For the reasons set forth below, we conclude that Mr. Esparza may not be reimbursed for this purpose.

BACKGROUND

Mr. Esparza, an employee of the Food and Drug Administration, was transferred from Denver, Colorado, to San Juan, Puerto Rico, by travel authorization issued on August 14, 1987. In September 1986, Mr. Esparza had entered into an automobile lease agreement for a term of 48 months. The agreement included an option to purchase the automobile at the end of the term, or upon early termination of the lease provided an additional early termination fee was paid. The terms of the lease agreement also prohibited taking the car

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out of the continental United States without written approval of the leasing agency.

Mr. Esparza requested permission of the leasing agency to ship the car to Puerto Rico, but permission was denied. Mr. Esparza then elected to exercise his option to terminate the lease early and purchase the car. In doing so, he incurred early termination fees in the amount of \$3,394.57. The agency asks whether the law and regulations authorizing reimbursement of expenses for the settlement of an unexpired lease found in 5 U.S.C. § 5724a(a)(4)(A) (Supp. IV 1986), and Federal Travel Regulations, para. 2-6.2h (Supp. 4, Aug. 23, 1982), incorp. by ref., 41 C.F.R. § 101-7.003 (1987), may serve as authority for the payment of the automobile lease termination expenses incurred by Mr. Esparza.

OPINION

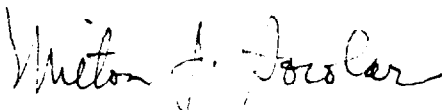
The provisions of law governing entitlement of employees to be reimbursed for relocation expenses incident to a permanent change of station are contained in 5 U.S.C. § 5724a (1982 and Supp. IV 1986). Paragraph 5724a(a)(4) authorizes payment of the expenses incurred by the employee in the sale of his residence or the settlement of an unexpired lease at his old duty station. The FTR provision to which the agency refers, para. 2-6.2h, implements this statutory provision with regard to the reimbursement of expenses incurred in settling an unexpired lease. Both the law and regulation are expressly limited to residential leases and may not be extended to automobile leases. Therefore, there is no legal basis to reimburse an employee for automobile lease termination expenses under 5 U.S.C. § 5724a(a)(4)(A) and FTR, para. 2-6.2h.

The only other possible authority for reimbursement appears to be 5 U.S.C. § 5724a(b), which authorizes the reimbursement of necessary and appropriate miscellaneous expenses incurred incident to the transfer within a set monetary limit. The implementing regulations are contained in part 3 of chapter 2 of the FTR. Paragraph 2-3.1 of those regulations provides, generally, that an employee is entitled to receive a miscellaneous expense allowance, the purpose of which is to help defray various expenses associated with discontinuing a residence at one location and reestablishing a residence at a new location. Paragraph 2-3.1b(5) includes as reimbursable expenses under this allowance forfeiture losses on certain service contracts such as medical, dental and food locker contracts that are not transferrable. Paragraph 2-3.1c(1), however, specifically excludes certain costs, including:

"(1) Losses in selling or buying . . .
personal property and cost items related to
such transactions; . . ." (Emphasis added.)

Clearly, an automobile is personal property under the regulations. The fee Mr. Esparza paid in connection with terminating the automobile lease and purchasing the automobile was in the nature of a cost item related to the purchase of the automobile rather than being in the nature of a loss on a nontransferable service-type contract. Since losses and costs associated with the sale or purchase of personal property are specifically excluded under FTR, para. 2-3.1c(1) from the miscellaneous expense allowance otherwise authorized, and are not included elsewhere in those regulations as a properly reimbursable item, Mr. Esparza may not be reimbursed for the automobile lease termination expense incurred incident to his purchase of the automobile.

Accordingly, Mr. Esparza's claim for reimbursement is denied.


for Comptroller General
of the United States