



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Carolyn S. Fleming - Relocation Income Tax
Allowance - Taxes not included

File: B-237237

Date: March 23, 1990

DIGEST

1. A transferred employee sold her residence at her old duty station and requests reimbursement for state income taxes required to be paid on the profit realized from that sale as a Relocation Income Tax (RIT) allowance under 5 U.S.C. § 5724b (1988). The claim is denied. Under the statute and chapter 2, part 11 of the Federal Travel Regulations (FTR), only those relocation expenses and allowances which are reimbursable elsewhere in the FTR, chapter 2, may be included in the computation of a RIT allowance. Since state income taxes paid on the residence sales profit are not reimbursable under the FTR in the first instance, such taxes are not includable in computation of a RIT allowance. See Guerry G. Notte, B-223374, Feb. 17, 1987, and decisions cited.

2. A transferred employee who was required to have Federal Insurance Contributions Act (FICA) taxes withheld from her relocation expense reimbursement, may not be reimbursed those taxes under the provisions of 5 U.S.C. § 5724b (1988) and chapter 2, part 11 of the Federal Travel Regulations (FTR). Only the moving and relocation expenses listed in paragraph 2-11.3(a) through (i) of the FTR may be included in the computation of a Relocation Income Tax allowance.

DECISION

This decision is in response to a request from J. R. Burkett, Director, Division of Finance, Office of the Regional Director - Region VI, Department of Health and Human Services. The request concerns an employee's right to be reimbursed as a Relocation Income Tax (RIT) allowance, state income taxes paid on the sale of her residence and Federal Insurance Contributions Act (FICA) withheld from her relocation expense reimbursement. We conclude that the employee is not entitled to additional reimbursement for the following reasons.

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BACKGROUND

Mrs. Carolyn S. Fleming, an employee of the Department of Health and Human Services, was transferred in the interest of the government from Mountain Home, Arkansas, to McKinney, Texas, in October 1988. She sold her residence near her old duty station in Arkansas and purchased another in the area of McKinney, Texas. While the federal income tax on the sale was deferred because the purchase price of the new residence exceeded the sales price of the old residence, the state income tax on the sale of the Arkansas residence could not be deferred because the replacement home was out of state. As a result, Mrs. Fleming's Arkansas income tax for 1988 was increased by \$1,457. She was paid a RIT allowance, but, based on the state tax on her capital gain, she claims entitlement to additional reimbursement.

In addition, the agency asks whether social security and Medicare taxes withheld from her relocation expense reimbursement should also be reimbursed.

ANALYSIS AND CONCLUSION

The statutory authority for payment of a RIT allowance is codified at 5 U.S.C. § 5724b (1988).^{1/} Under regulations prescribed by the President, section 5724b authorizes reimbursement of substantially all federal, state and local income taxes incurred by an employee arising out of reimbursement for travel and transportation expenses and authorized relocation allowances incident to a permanent change of station. The governing regulations issued under that authority are found in chapter 2, part 11 of the Federal Travel Regulations (FTR).^{2/} Employees transferred on or after November 14, 1983, are eligible for the allowance. Paragraph 2-11.3 of the FTR states that the RIT allowance is limited by law as to the types of moving expenses that can be covered, with the proviso that those expenses must be actually incurred and are not allowable as a moving expense deduction for income tax purposes. Clauses (a) through (i) of that paragraph list the types of moving and relocation expenses or allowances which may be included in the computation of a RIT allowance. In brief, only those

^{1/} Public Law No. 98-151, November 14, 1983, 97 Stat. 978, as amended by Public Law No. 98-473, October 12, 1984, 98 Stat. 1969.

^{2/} Supp. 27, 53 Fed. Reg. 16899-16911, May 12, 1988. Incorp. by ref., 41 C.F.R. § 101-7.003 (1988).

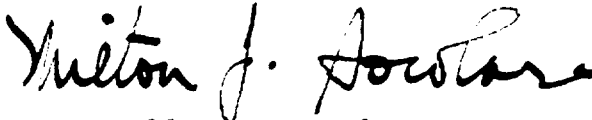
expenses and allowances which are reimbursable under the FTR in the first instance may be included in the RIT allowance computation.

Capital Gain on Residence Sale

We have held that a personal income tax imposed by a state on the capital gain realized on the sale of a residence incident to an out-of-state transfer may not be reimbursed under 5 U.S.C. § 5724a and the FTR either as a real estate expense or as a miscellaneous expense. Guerry G. Notte, B-223374, Feb. 17, 1987, and decisions cited. Therefore, since the state income tax paid by Mrs. Fleming on the profit realized on the sale could not be reimbursed under any provision of the FTR, she may not be reimbursed any additional RIT allowance based on that tax. Guerry G. Notte, supra.

FICA Tax Reimbursement

As previously observed, the RIT allowance was enacted to permit reimbursement to an employee of "substantially all" federal, state, and local income taxes the employee would be required to pay as a result of reimbursements for expenses incurred and relocation allowances authorized incident to a transfer. Since required FICA withholdings from wages are not included in FTR, para. 2-11.3(a) through (i) as a covered moving expense, such withholdings may not be reimbursed as a RIT allowance.



Acting Comptroller General
of the United States