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Comptroller General  
of the United States  
Washington, D.C. 20548

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## Decision

**Matter of:** Diane L. Svoboda - Pro Rata Reimbursement of  
Real Estate Expenses - Maximum Reimbursement

**File:** B-243802

**Date:** August 5, 1991

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### DIGEST

A transferred employee sold her duplex at her old duty station and has claimed relocation expenses, based on a pro rata amount, up to the statutory maximum of \$17,177. The agency limited reimbursement to 50 percent of the statutory maximum or \$8,588.50 based on an interpretation of its own regulations. The claim may be paid since the statutory authority and the implementing Federal Travel Regulations clearly contemplate that the employee shall be reimbursed up to the statutory maximum.

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### DECISION

A decision is requested on whether Ms. Diane L. Svoboda, an employee of the Internal Revenue Service (IRS), may be reimbursed a pro rata amount for the sale of her duplex home, not to exceed the maximum statutory amount of reimbursement in effect at the time of her transfer, or is her reimbursement limited to a pro rata amount of the maximum statutory amount authorized.<sup>1/</sup> For the following reasons, we hold that Ms. Svoboda may be reimbursed for the pro rata expenses of the sale of her residence not to exceed the statutory maximum amount of \$17,177.

### BACKGROUND

Ms. Svoboda was transferred from West Los Angeles, California, to Washington, D.C., and reported for duty on January 19, 1988. In October 1989, Ms. Svoboda sold her duplex in Hermosa Beach, California, for \$640,000. One unit of the duplex was her residence and the other was rented out. Expenses for the sale totaled \$36,002.50, of which \$31,820 was the real estate broker's commission.

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<sup>1/</sup> A decision was requested by Gwendolyn A. Walker, Certifying Officer, Department of the Treasury, Internal Revenue Service, Washington, D.C.

The IRS regulations pertaining to reimbursement for relocation expenses in IRM 1764, § 940(3), provide that the maximum amount of reimbursement allowed an employee for the sale of a residence at his/her old duty station at the time Ms. Svoboda reported to duty was \$17,177.<sup>2/</sup> Also, IRM 1764 states in § 920(2) that if the residence is a multiple occupancy dwelling which is occupied only partially by the employee, the employee's expenses will be reimbursed on a pro rata basis.

The IRS limited Ms. Svoboda's expense reimbursement incident to the sale of her duplex to 50 percent of the maximum statutory amount of \$17,177, or \$8,588.50, instead of 50 percent of the employee's closing costs. Ms. Svoboda is claiming additional expenses up to the \$17,177 maximum on the basis that proration applies solely to allowable closing costs.<sup>3/</sup> We agree with Ms. Svoboda.

#### OPINION

Under the governing statute pertaining to reimbursement for real estate expenses, the total amount which may be allowed for a sale incident to a transfer is the lesser of 10 percent of the sales price or \$15,000, subject to a yearly Consumer Price Index increase. See f.n. 2, supra. The governing regulations are those now contained in 41 C.F.R. § 302-6 (1990), subsection 6.1(f) of which provides in part that where the residence is a duplex partially occupied by the employee, residence transaction expenses shall be pro rated.

Decisions of this Office recognize pro rata reimbursement on this basis when the residence is a duplex or another type of multiple occupancy dwelling which is occupied only partially by the employee. 55 Comp. Gen. 747 (1976); 54 Comp. Gen. 597 (1975); William C. Sloane, B-190607, Feb. 9, 1978. Also, this Office has held that when an agency determines that a transfer is in the interest of the government, certain allowances under 5 U.S.C. §§ 5724, 5724a, pertaining to reimbursement for travel and relocation expenses, including real estate transactions, are mandatory. Therefore, an agency may not deprive employees of reimbursement for those items for which

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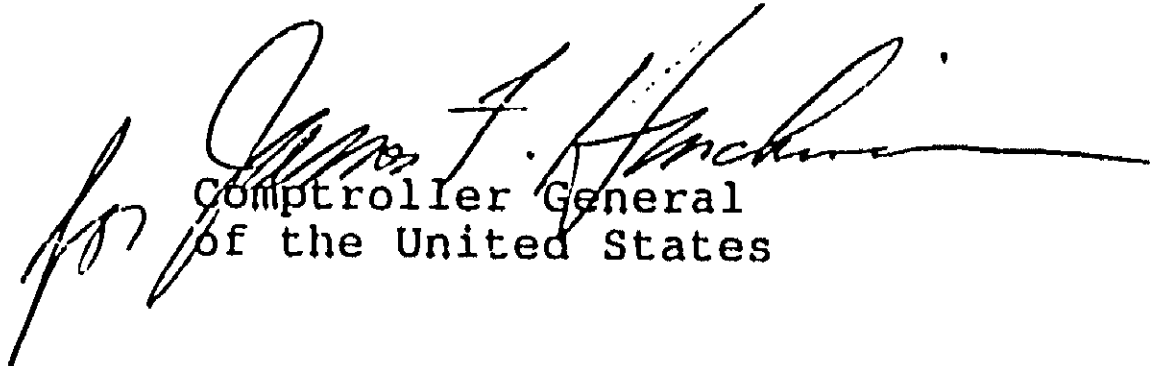
<sup>2/</sup> By statute, the maximum amount of reimbursement allowable is \$15,000, or 10 per cent, whichever is less, subject to an annual increase based on the Consumer Price Index. 5 U.S.C. § 5724a(a)(4)(B)(iii) (1988). See also 52 Fed. Reg. 48,326, Dec. 21, 1987.

<sup>3/</sup> Ms. Svoboda is claiming a 60/40 percent pro rata reimbursement; however, that issue has not been presented to us for a decision.

they are entitled. 55 Comp. Gen. 613 (1976); Rose Inouye, B-194196, Nov. 14, 1979. See also, 41 C.F.R. § 302-6.1 (1990).

We believe that the plain language of the statute and the implementing regulations in the FTR, as well as IRS' own regulations in IRM 1764, clearly contemplate that an employee will be reimbursed real estate expenses on a pro rata basis, not to exceed the statutory maximum.<sup>4/</sup> In this connection, certain relocation expenses are based on a flat fee rather than a percentage of the sales price. We have held that such fees should not be prorated at all but should be paid in toto, provided the fee is reasonable in amount and in line with other charges for similar services in the locality concerned. 54 Comp. Gen. 597, 599, supra; Dikran Hazirjian, B-213385, Mar. 23, 1984; Marcus D. Dumond, B-183612, Aug. 13, 1975.

Accordingly, Ms. Svoboda's claim for real estate expenses for her residence part of the duplex may be paid, if otherwise correct, not to exceed the statutory maximum of \$17,177.

  
Comptroller General  
of the United States

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<sup>4/</sup> The IRS regulations in IRM 1764 closely follow the language in the FTR.