Text as published on gao.gov, https://www.gao.gov/products/b-160040, archived 2026-09-24. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-160040, Jan 3, 1978

Number: B-160040

Date: 1978-01-03

B-160040, JAN 3, 1978

TRANSFERRED EMPLOYEE MADE SETTLEMENT ON PURCHASE AND SALE OF RESIDENCES BEFORE APRIL 27, 1977, DATE OF GAO DECISION IN GEORGE W. LAY, 56 COMP. GEN. 561, WHICH MODIFIED THE REQUIREMENTS FOR REIMBURSEMENT OF LEGAL FEES INCURRED INCIDENT TO RESIDENCE TRANSACTIONS. SINCE LAY IS PROSPECTIVE ONLY, FULL ITEMIZATION IS PREREQUISITE TO REIMBURSEMENT. CLAIM IS DENIED BECAUSE EMPLOYEE FAILED TO SUBMIT ITEMIZED STATEMENT OF LEGAL FEES.

CHARLES W. DODGE - ATTORNEY'S FEES:

THIS ACTION IS IN RESPONSE TO A REQUEST DATED OCTOBER 26, 1977, BY MR. EDWIN J. FOST, CHIEF OF THE ACCOUNTING SECTION, OFFICE OF THE CONTROLLER, DRUG ENFORCEMENT ADMINISTRATION (DEA), DEPARTMENT OF JUSTICE, FOR RECONSIDERATION OF OUR DECISION IN CHARLES W. DODGE, B-160040, JULY 13, 1976. SPECIFICALLY, MR. DODGE, A DEA EMPLOYEE, HAS APPEALED THE PORTION OF THAT DECISION WHICH DISALLOWED HIS CLAIM FOR REIMBURSEMENT OF ATTORNEY'S FEES INCURRED IN CONNECTION WITH THE PURCHASE AND SALE OF RESIDENCES INCIDENT TO A PERMANENT CHANGE OF STATION.

THE FACTS IN THIS CASE ARE FULLY SET FORTH IN OUR PREVIOUS DECISION DATED JULY 13, 1976, CONCERNING THIS CLAIM, AND NEED NOT BE REITERATED HERE EXCEPT AS NECESSARY.

IN THE PRIOR ACTION, MR. DODGE HAD CLAIMED ATTORNEY'S FEES IN THE AMOUNT OF $145 AND $304.50 FOR THE SALE AND PURCHASE TRANSACTIONS, RESPECTIVELY. NEITHER FEE WAS ITEMIZED. WE DENIED REIMBURSEMENT, STATING:

"THE PERTINENT REGULATION HERE IS FTR PARA. 2-6.2C (MAY 1973) WHICH SPECIFIES THOSE LEGAL AND RELATED EXPENSES WHICH MAY BE REIMBURSED. ONLY THOSE PARTS OF THE ATTORNEY'S FEES THAT REPRESENT SERVICES OF THE TYPE ENUMERATED IN THE REGULATION ARE REIMBURSABLE.

B-169621, JUNE 25, 1970. WE HAVE CONSISTENTLY HELD THAT NO REIMBURSEMENT MAY BE ALLOWED FOR LEGAL SERVICES THAT ARE OF AN ADVISORY NATURE. B-183443, JULY 14, 1975, AND CASES CITED THEREIN. THE PURPOSE OF THE REQUIREMENT FOR A DETAILED STATEMENT OF ATTORNEY'S FEES IS TO PROVIDE A BASIS FOR DISTINGUISHING REIMBURSABLE FEES FROM THOSE FOR WHICH REIMBURSEMENT MAY NOT BE AUTHORIZED. REIMBURSEMENT FOR SUCH SERVICES WILL BE ALLOWED ONLY WHEN AN ITEMIZED STATEMENT IS SUBMITTED BY THE ATTORNEY ALLOCATING DOLLAR AMOUNTS TO EACH SERVICE RENDERED. THERE CAN BE NO REIMBURSEMENT BASED UPON A LUMP-SUM BILL, OR UPON A BILL CONTAINING AN ITEMIZED LIST OF SERVICES, BUT NO DOLLAR AMOUNT FOR EACH SERVICE. UPON PRESENTATION BY MR. DODGE OF A SUFFICIENTLY ITEMIZED STATEMENT OF CHARGES

BY HIS ATTORNEY, THE CERTIFYING OFFICER MAY MAKE A DETERMINATION AND AUTHORIZE REIMBURSEMENT OF THOSE FEES PROPERLY REIMBURSABLE UNDER FTR PARA. 2-6.2C."

IN REQUESTING RECONSIDERATION, MR. DODGE HAS SUBMITTED A LETTER FROM THE ATTORNEY WHO RENDERED THE SERVICES. THAT LETTER DESCRIBES IN GREAT DETAIL THE CUSTOMARY SERVICES RENDERED BY AN ATTORNEY INCIDENT TO A REAL ESTATE TRANSACTION, BUT DOES NOT PARTICULARIZE WHICH SERVICES WERE RENDERED TO MR. DODGE, OR IDENTIFY THE SPECIFIC FEE FOR SUCH SERVICES. THE ATTORNEY EXPLAINS THAT HIS FEES ARE BASED ON A PERCENTAGE OF THE SALE OR PURCHASE PRICE OF THE RESIDENCE, AND THAT THERE IS NO KNOWN METHOD BY WHICH HE COULD ASSESS A VALUE TO THE VARIOUS SERVICES HE PERFORMS. BASED UPON THAT EXPLANATION, MR. DODGE HAS AGAIN CLAIMED REIMBURSEMENT FOR THE LEGAL FEES INCURRED. IN ADDITION, MR. DODGE CONTENDS THAT TO FORCE ITEMIZATION WOULD VIOLATE THE PRIVACY AFFORDED TO HIM THROUGH THE ATTORNEY-CLIENT PRIVILEGE. INVOKING THAT PRIVILEGE, MR. DODGE STATES THAT HE SHOULD NOT BE REQUIRED TO DISCLOSE ANY ITEMIZATION OF SERVICES HIS ATTORNEY MIGHT PROVIDE.

STATUTORY AUTHORITY FOR REIMBURSEMENT OF THE LEGAL EXPENSES OF RESIDENCE TRASACTIONS OF TRANSFERRED EMPLOYEES IS FOUND AT 5 U.S.C. 5724A (1970). IN OUR RECENT DECSION IN GEORGE W. LAY, 56 COMP.GEN. 561 (1977), WE REVIEWED THE POLICY CONCERNING THE EXTENT TO WHICH LEGAL FEES MAY BE REIMBURSED. IN THAT DECISION WE HELD THAT NECESSARY AND REASONABLE LEGAL FEES AND COSTS, EXCEPT FOR THE FEES AND COSTS OF LITIGATION, INCURRED BY REASON OF THE PURCHASE OR SALE OF A RESIDENCE INCIDENT TO A PERMANENT CHANGE OF STATION MAY BE REIMBURSED PROVIDED THAT THE COSTS ARE WITHIN THE CUSTOMARY RANGE OF CHARGES FOR SUCH SERVICES WITHIN THE LOCALITY OF THE RESIDENCE TRANSACTION. IN ADDITION, WE HELD THAT SINCE THE COST OF LEGAL SERVICES NORMALLY RENDERED IN THE LOCALITY OF THE RESIDENCE TRANSACTION MAY BE REIMBURSED, A SINGLE OVERALL FEE MAY BE PAID WITHOUT ITEMIZATION IF IT IS WITHIN THE CUSTOMARY RANGE OF CHARGES IN THAT LOCALITY. SINCE OUR DECISION IN LAY REPRESENTED SUBSTANTIAL DEPARTURE FROM OUR PREVIOUS INTERPRETATION OF THE FEDERAL TRAVEL REGULATIONS, THE RULES SET FORTH IN LAY WERE HELD TO BE PROSPECTIVE ONLY TO CASES IN WHICH SETTLEMENT OF THE TRANSACTION FOR WHICH REIMBURSEMENT IS CLAIMED OCCURS ON OR AFTER APRIL 27, 1977. BECAUSE SETTLEMENT IN THIS CASE ON THE CLAIMED TRANSACTIONS HAVE OCCURRED BEFORE THAT DATE, THE PRESENT MATTER MUST BE DETERMINED IN ACCORDANCE WITH THE PREVIOUSLY APPLICABLE LAWS AND DECISIONS.

REGARDING MR. DODGE'S CLAIM OF CONFIDENTIALITY UNDER THE ATTORNEY CLIENT PRIVILEGE, WE NOTE THAT THE PRIVILEGE IS SIMPLY A RULE OF EVIDENCE. SEE FEDERAL RULES OF EVIDENCE RULE 501, 28 UNITED STATES CODE. THUS, MATTERS INVOLVING THE RECEIPT BY AN ATTORNEY OF FEES FROM A CLIENT ARE NOT USUALLY PRIVILEGED COMMUNICATIONS TO WHICH THE RULE WOULD APPLY. UNITED STATES V. PONDER, 475 F.2D 37, 39 (5TH CIR. 1973); IN RE GRAND JURY PROCEEDINGS, 517 F.2D 666 (5TH CIR. 1975). ACCORDINGLY, MR. DODGE'S CLAIM OF ATTORNEY- CLIENT PRIVILEGE IS WITHOUT MERIT. CONCERNING MR. DODGE'S CONTENTION THAT IT IS IMPOSSIBLE FOR HIS ATTORNEY TO PROVIDE AN ITEMIZED LIST OF HIS FEES, IT HAS BEEN OUR EXPERIENCE THAT ATTORNEYS HAVE IN FACT BEEN ABLE TO PROVIDE SUCH ITEMIZATION FOR LEGAL SERVICES RENDERED TO TRANSFERRED EMPLOYEES. THEREFORE, AS NOTED IN OUR PRIOR DECISION CONCERNING THIS CLAIM, IN THE ABSENCE OF AN ITEMIZED STATEMENT OF CHARGES, REIMBURSEMENT OF LEGAL FEES IS NOT PERMITTED.

SINCE MR. DODGE HAS NOT FURNISHED THE REQUIRED ITEMIZATION OF HIS ATTORNEY'S FEES, OUR DECISION OF JULY 13, 1976, IS SUSTAINED AND THE CLAIM IS DENIED.