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Comments on Section 352 – Real Estate Settlements

On behalf of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice, we wish to offer the following comments for your consideration.

Background

The Federal Government relocates a large number of employees during any calendar year for a myriad of reasons. Some relocations are the direct result of hiring new employees either from another Federal Agency/Bureau with Government experience, or individuals with no prior Federal Government service or experience. These individuals are subject to an extensive Criminal Background Investigation, as well as in some cases Drug Testing.

Additionally, the Federal Government will relocate employees that are already employed in a particular Agency/Bureau and will transfer its' own employees within the organization (either at the Department level; or Bureau to Bureau; or within the same Bureau). These individuals are subject to an extensive Criminal Background Investigation (if transferring from one Bureau to another Bureau within the same Department), or at a minimum, having their Background Information updated.

There is existing Statutory Legislation that enables Agencies/Bureaus to reimburse or pay for specific relocation expenses that are incurred. The authority for Agencies/Bureaus to do this is found in the Federal Travel Regulation (FTR). The FTR identifies those relocation entitlements and allowances that an Agency/Bureau must pay (otherwise known as Non-Discretionary or Mandatory)) as well as those than an Agency/Bureau may pay (otherwise known as Discretionary or Non-Mandatory). These entitlements and allowances are identified below:

Mandatory Entitlements include:

En-Route Travel Expenses – Includes travel transportation and per diem for lodging, meals & incidentals for employee and immediate family members.

Shipment and Storage of Household Goods – Includes line-haul charges, packing materials in connection with shipping household goods. Also included is storage of household goods.

Real Estate Transactions – Reimbursement of allowable expenses associated with Lease Breaking Expenses, or the Sale of Residence. Also included is reimbursement of allowable expenses associated with the Purchase of Residence.

Miscellaneous Expense Allowance – An allowance to cover the cost of vehicle registration and tags, expenses associated with establishing and dis-establishing a residence.

Relocation Income Tax Allowance – Relocation payments made to an employee or on their behalf are considered income and therefore may be subject to taxation. The Federal Government pre-pays the federal tax withholding; as well as makes payments for Social Security and Medicare withholdings. this website.

Discretionary Allowances Which May Be Authorized include:

House Hunting Trip – Includes travel transportation, lodging, meals and incidental expenses for employee and spouse only.

Temporary Quarters – An allowance that provides for lodging and meals (for the employee and immediate family members) during the period in which they have vacated their old residence at the old duty station, and are awaiting to occupy their new residence at the new duty station.

Third Party Relocation Services – Some Federal Agencies/Bureaus have contract with a third party relocation company to provide relocation assistance in the following areas:

- Marketing Assistance –

This service is at no additional cost, and is designed to assist relocating employees in selecting a listing real estate broker, establishing a realistic listing price and marketing strategy, and coordinating your marketing efforts with the goal of achieving a contract of sale for your residence as quickly as possible.

- Destination/Homefinding Services –

This service is at no cost, and is designed to assist relocating employees and/or their families in obtaining information about the location that you are being transferred to. The information that can be obtained relates to: a) City, County, and local area information (schools, demographical information, real estate markets, financial considerations affecting cost of living, finding a realtor at the new location, etc).

- Renter's Assistance (not reimbursable) –

This service is a fee paid service by the employee and is not reimbursable by the Federal Government, and is designed to provide the relocating employee and/or their family with assistance in obtaining information on rental properties that are available at the new location.

- Spouse Career Counseling (not reimbursable) –

This service is a fee paid service by the employee and is not reimbursable by the Federal Government, and is designed to provide an assistance with job search strategies, family counseling assistance, community research, analysis of the spouse's skills,

accomplishments, career options, development of job seeking strategies, networking assistance, and resume preparation.

- Guaranteed Home Sale Program (GHS) -

This service is designed to assist relocating employees who are unable to sell their residence on their own . This is achieved by having a third party relocation company purchase your home based two market value appraisals conducted using the Employee Relocation Council (E-R-C) Standardized Relocation Appraisal Form.

- Mortgage Assistance & Direct Billing of Closing Costs –

This service is designed to direct bill the closing costs to the Federal Government Agency/Bureau for all allowable mortgage-related closing costs related to the purchase of a residence at the new duty station. If the employee chooses to obtain a loan from the contracted vendor, these costs, which would be traditionally paid by the employee at closing and subsequently reimbursed by the Federal Government Agency/Bureau, are billed directly to the Federal Agency/Bureau. This eliminates the need to expend personal funds for closing costs associated with the purchase of a residence at the new duty station, and eliminates the added step of preparing a voucher.

Discussion

The Federal Travel Regulation (FTR) provides for reimbursement of real estate transactions to include costs associated with either Lease Breaking or Sale of Residence, and costs associated with the Purchase of Residence. The FTR requires the employee to furnish documentation (as required by the Agency/Bureau) to substantiate all claims for reimbursement. The necessary documentation that is required to be reimbursed for real estate transactions requires the submission of the HUD-1 Closing Statement which identifies the parties (both Buyer and Seller).

Additionally, in the event that an Federal employee is unable to sell their house on their own, and their Agency/Bureau has contracted with a third party relocation company whose contract includes a Guaranteed Home Sale, copies of the HUD-1 Closing Statement must also be furnished.

It is our opinion that either through direct reimbursement of real estate expenses to the employee from the Federal Agency/Bureau or the third party relocation company, that neither are considered to be a financial institution.

If an employee accomplishes the sale of their residence by utilizing the services of a third party relocation company, the Agency/Bureau pays a fee to the third party relocation company (usually a percentage of the appraised value of the residence). The third party relocation company does disburse equity to the employee (in compliance with the Agencies/Bureaus contract), reviews all pertinent documents (to include title search, inspections, appraisals, escrow documents, paperwork from closing/settlement attorneys) and maintains copies on file for review by the Agency/Bureau.

Agencies can only acquire the services of a third party relocation company by using the following methods: 1) Off General Services Administration (GSA) Federal Supply Schedule (FSS); 2) Using an existing contract already awarded by a Federal Agency/Bureau; and 3) Awarding their own contract.

Issue

Allowing for an exemption to the proposed rule that relates to Section 352 – Real Estate Settlements for Federal employees, and defining what is a financial institution.

Recommendation

It is our recommendation that an exemption be granted under the USA Patriot Act of 2001, from Section 352 – "Real Estate Settlements" for all relocations authorized by the Federal Agency/Bureau or relocation of a Federal employee.

It is also our recommendation that third party relocation companies not be considered as a financial institution.

If you have any questions, please contact Mr. Richard L. Trent, Chief, Travel and Relocation Branch. Mr. Trent may be reached at 202-927-7807.