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DECISION



H. H. Hunt
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-191232

DATE: June 20, 1978

MATTER OF: ValGene Mitchell - Possessory Interest Taxes

DIGEST: Deceased National Park Service employee had been assessed possessory interest tax on Government quarters which he rented and occupied. Agency policy permitted waiver of payroll deduction for quarters rent in amount of tax paid. Policy prohibited issuance of Government check or cash for payment of taxes. Claim by employee's widow for payment of taxes assessed but unpaid is denied. Under agency policy no further payroll deductions can be made, and reimbursement may not be made by Government check or cash payment.

By a letter dated January 25, 1978, Mr. Foon Lee, a certifying officer of the Department of the Interior, National Park Service, requested a decision concerning a claim submitted by Mrs. ValGene Mitchell, the widow of Mr. Leone Mitchell, a former Park Service employee. Mrs. Mitchell is claiming reimbursement of possessory interest taxes which were assessed while she and her deceased husband occupied housing owned and rented to them by the Park Service.

The record indicates that prior to his death Mr. Mitchell was the Superintendent of the Whiskeytown National Recreation Area, California. From at least 1973 until the time of his death, he rented a dwelling owned by his employer, the National Park Service. During that period of time, Shasta County, California, assessed a possessory interest tax against Mr. Mitchell's tenancy interest. Counties in California are authorized to impose an annual use or property tax on possessory interests in improvements on tax-exempt land. See sections 104 and 107 of California Revenue and Taxation Code, and 18 California Administrative Code, section 21b. Thus, a possessory interest tax is a levy on a person's right to use and occupy land which is owned by a tax-exempt

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entity. Such a tax was recently upheld by the United States Supreme Court in United States v. County of Fresno, 429 U.S. 452 (1977). Thus, for the years of 1973, 1974, and 1975, Shasta County imposed on Mr. Mitchell possessory interest taxes in the amounts of \$415, \$409.76 and \$348.29, respectively, for a total of \$1,173.05. Since this amount was unpaid at the time of his death, additional delinquency penalties totaling \$514.51 are also owed to the county. Mrs. Mitchell is claiming only payment of the basic tax amount of \$1,173.05.

Although during the years 1973-75 the Department of the Interior had no uniform policy concerning payment of the possessory interest tax, the Western Region of the National Park Service had a policy of waiving payroll deductions for rent in the amount of the possessory interest tax paid by an employee. This policy was based on the fact that the rent charged by the Park Service for the dwelling was computed by reference to the rental rates for similar properties in the surrounding community. The rental rates for similar properties presumably included real estate taxes assessed by the county and passed on to the tenants. A memorandum dated April 6, 1973, to the Director of the Western Region from the Chief, Quarters, Permits, and Utilities Appraisals, embodied the waiver policy. The memorandum provides, in pertinent part as follows:

"At your operational level you may waive making payroll deductions for rent to compensate individual employees the exact amount of noncomparable possessory interest tax proved to have been paid by them.

"a. Waivers are to be effective throughout as many consecutive pay periods, or fraction of pay periods, as necessary to reimburse individuals for possessory tax paid.

"b. Waiving rent deductions is authorized only during the year the tax is paid, and is not authorized for recovery of tax paid in prior years.

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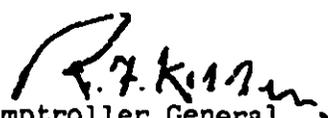
"c. Reimbursements to employees by issuing government checks or making cash payments to them is not authorized."
(Emphasis in original.)

Thus, under the policy in effect in the Western Region of the Park Service, waiver of rental payments was the exclusive method of reimbursing employees for possessory interest taxes paid. Reimbursement by issuing Government checks or making cash payments was not authorized.

In the present case Mr. Mitchell failed to pay the tax assessed against him from 1973 through 1975. Had he had done so, presumably the commensurate amount of rent for the dwelling would have been waived. However, under the written agency policy such waiver could only be accomplished by waiver of the payroll deductions for rent. Since Mrs. Mitchell no longer occupies Government quarters, and since no compensation is currently due her husband, no further payroll deductions can be made. Further, under the express terms of the policy, reimbursement of the taxes may not be made by issuance of a Government check or by a cash payment.

Accordingly, in the absence of a contrary agency regulation or other authority which would authorize such an expenditure of agency funds, the present claim cannot be certified for payment.

Acting


Comptroller General
of the United States