



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

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B-177875

May 7, 1973

The Honorable Robert C. Seamans
The Secretary of the Air Force

Dear Mr. Secretary:

Further reference is made to letter dated December 29, 1972, from the Assistant Secretary of the Air Force, Manpower and Reserve Affairs, in which a decision is requested concerning the definition of the word "acquired" as used in the Joint Travel Regulations in connection with the shipment of household effects at Government expense. The submission has been assigned PDTATAC Control No. 72-60 by the Per Diem, Travel and Transportation Allowance Committee.

In his letter the Assistant Secretary indicates that certain furniture companies located within the United States conduct overseas sales programs, which are primarily directed to members of the uniformed services. It appears that under these programs, members of the services and their families are visited by salesmen for the purpose of selling them furniture for delivery and use at their next permanent duty station in the United States. It is said that furniture purchased in this way is not delivered outside the United States, but remains with the manufacturer until the member returns from his overseas assignment.

At the time these programs were established the Assistant Secretary says it was contemplated that when a member made a purchase, the furniture would be placed in storage for him by the manufacturer for shipment on a Government bill of lading within his legal weight limitation, incident to his next permanent change of station within the United States.

It is stated in the Assistant Secretary's letter that inquiries by Government transportation officers directed to the furniture companies where purchases have been made, reveal that in many cases the furniture is not available for shipment at the time of the effective date of the member's permanent change-of-station orders. Among the reasons advanced for this are the following: the furniture is not yet manufactured; the furniture is only partially completed; the member's credit has not been approved; or, only a portion of the total order is ready.

Due to the nonavailability of the furniture for shipment, the question has been raised as to whether the furniture in such cases is

[Shipment of Household Effects at
Government Expense]

PUBLISHED DECISION
52 Comp. Gen. _____

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acquired by the member prior to the effective date of the permanent change-of-station orders. In this regard, it is pointed out by the Assistant Secretary that the word "acquired" has been interpreted variously to mean:

- a. when ordered, or contracted for,
- b. when final payment is made,
- c. when taken into the physical possession of the member

In view of the above, our decision is requested as to whether a, b, c, above, or some other time may be used in determining the proper application of the word "acquired" in connection with household goods.

Under the provisions of 37 U.S.C. 406(b) a member of a uniformed service is entitled to the transportation of his household effects, within weight allowances prescribed by the Secretaries concerned, in connection with a change of temporary or permanent station. The Government's maximum obligation is the cost of a through shipment of a member's household goods within his prescribed weight limitation in one lot between authorized places at a valuation equivalent to the lowest applicable rate established in the carrier's tariffs. Paragraph M8007-2, Joint Travel Regulations.

Paragraph M8009-3 authorizes deviation from the regulations so that shipments may be made to and from any points. However, the member must agree to pay any additional costs resulting from such shipments.

Paragraph M8000-2, item 9 of the regulations provides that the term "household goods" does not include articles of household goods acquired subsequent to the effective date of permanent change-of-station orders except in certain circumstances not here relevant.

Generally, in order to pass title under a contract for the sale of an article to be manufactured, there must be not only a completion of the article, but also a delivery, or at least something equivalent thereto, a tender, or a setting apart for the buyer and an appropriation to the contract. The intention of the parties will, however, govern, and if such intention appears the title to the property will pass before or without delivery. 77 C.J.S. Sales §257.

The Uniform Commercial Code provides that title cannot pass prior to identification of the goods to the contract, and further provides that title passes with reference to physical delivery of the goods in the absence of explicit agreement otherwise. Thus, in the absence of

explicit agreement, title does not pass until physical delivery, as distinguished from mere completion of manufacture or production of the goods. However, identification to the contract may take place prior to physical delivery, since it may take place when the goods are shipped, marked, or otherwise designated by the seller as goods to which the contract refers. 67 Am Jur 2d, Sales, §239.

Where a Department of Defense employee paid part of the purchase price of new furniture upon placement of a purchase order, the remainder to be paid on delivery, and the furniture was shipped subsequent to the effective date of his travel authorization, in the absence of evidence indicating that title passed to him on or before such date, his claim for reimbursement for transportation of the furniture was disallowed. See decision B-166028, April 22, 1969, copy enclosed.

Thus, we find no basis for the view that a member has "acquired" furniture that he has ordered or contracted for if it is not yet manufactured, or is only partially completed, on the effective date of his permanent change-of-station orders. Whether title to the furniture would vest in the purchaser after completion or production, but before delivery or shipment of the goods to him would depend on the terms of the purchase contract.

In the absence of evidence that title to the furniture still in the possession of the manufacturer had passed to the member prior to the effective date of his permanent change-of-station orders, we are of the opinion that he would not be entitled to shipment of such items at Government expense incident to his change of station.

Your question is answered accordingly.

Sincerely yours,

Paul G. Deabling

For the Comptroller General
of the United States