



PER DIEM, TRAVEL AND TRANSPORTATION ALLOWANCE COMMITTEE

4800 Mark Center Drive, Suite 04J2501

Alexandria, VA 22350-9000

www.defensetravel.dod.mil

PDTATAC/vap

2 August 2016

MEMORANDUM FOR

SEE DISTRIBUTION

SUBJECT:

UTD for MAP 93-16(E) -- Habitation Tax Reimbursement in France

1. **SYNOPSIS:** Establishes an OHA unique expense for the Habitation Tax in France and removes the tax from the utility/recurring maintenance allowance.
2. These changes are scheduled to appear in the JTR, dated 1 October 2016.
3. This determination is *effective on 16 August 2016*.
4. Action Officer: Velda A. Potter (velda.a.potter.civ@mail.mil).

//approved//

JOEL T. RIDENOUR

Chief, Policy and Regulations Branch

Attachment:

Rev 2

Uniformed E-Mail Distribution:

MAP Members P&R Branch PMO-DTS GSA-3FT GSA-OGP(MTT) DTMO PPC

JTR REVISIONS:

10020-E:

*E. OHA Unique Expenses. In some OCONUS locations members incur housing expenses for items that are not incurred in CONUS. Under the procedures in App K5, reimbursement may be authorized for specific locations and specific types of expenses.

App K5. :

*APPENDIX K: OVERSEAS HOUSING ALLOWANCE (OHA)

PART 5: OHA UNIQUE EXPENSES

UNIFORMED MEMBERS ONLY

A. Purpose. In some OCONUS areas, a member and/or dependent incurs significant mandatory and excessive housing expenses for items that a CONUS-based member never incurs. Since the expenses are not incurred by every member, not incurred monthly, vary in amount and are significant they cannot be made a part of the average utility/recurring maintenance allowance calculation. For these expenses, payment is a dollar for dollar reimbursement for a specifically authorized expense at designated authorized locations.

B. Criteria. A mandatory and excessive housing expense incurred periodically (i.e., annually, semiannually, etc.) that must meet all of the criteria below to be authorized as an OHA - Unique Expense eligible for reimbursement. ***PDTATAC does not accept requests from individual members for OHA - Unique Expense authorization.*** All requests for specific expenses at specific locations must be forwarded through the Major Command level, then via the applicable Service representative (indicated under the heading "Feedback Reporting" in the JTR introduction) to PDTATAC. The Secretary Concerned or Secretarial Process, at Service discretion, may reimburse OHA Unique Expenses for the locations and specific expenses cited in par. C of this Part with no further PDTATAC action required. Each individual mandatory and excessive expense must be:

1. Incurred by members receiving OHA at a duty station, and
2. An item/expense that exceeds 1% of Spendable Income for the typical uniformed member, and
3. An item/expense that is not purchased or paid by CONUS-based members, and
4. Required by law, and
5. Specifically authorized/approved by PDTATAC for reimbursement are listed in par. C below, and
6. Verified by a valid receipt, and
7. Paid on or after 16 August 2016. No expenses paid before this date can be reimbursed

C. Authorized Locations. Locations authorized an OHA-unique expense reimbursement (no other locations or expenses authorized):

1. France. Mandatory Habitation Tax may be reimbursed, excluding late payment fees.

The following pages are the same policy preceding this page but showing tracked changes.



PER DIEM, TRAVEL AND TRANSPORTATION ALLOWANCE COMMITTEE

4800 Mark Center Drive, Suite 04J2501

Alexandria, VA 22350-9000

www.defensetravel.dod.mil

PDTATAC/tlw

9 November 2015

MEMORANDUM FOR

SEE DISTRIBUTION

SUBJECT:

UTD/CTD for MAP/CAP 142-15(I) -- Move Footnotes in DEPENDENT/
IMMEDIATE FAMILY Definition in App A1

1. **SYNOPSIS:** This item moves the footnotes in the definition of DEPENDENT/IMMEDIATE FAMILY MEMBER to the bottom of the definition so the references to the footnotes within the definition accurately apply.
2. The attached revision is forwarded for information purposes only. No coordination or comments are required.
3. This revision was initiated by PDTATAC Staff.
4. These changes are scheduled to appear in the JTR, dated 1 December 2015.
5. This determination is effective when printed in the JTR.
6. Action Officer: Lynn Wawrzyniak (tracie.l.wawrzyniak.civ@mail.mil).

JOEL T. RIDENOUR

Chief, Policy and Regulations Branch

Attachment:

Rev 1

Uniformed E-Mail Distribution:

MAP Members P&R Branch PMO-DTS GSA-3FT GSA-OGP(MTT) DTMO PPC

Civilian E-Mail Distribution:

CAP Members P&R Branch PMO-DTS GSA-3FT GSA-OGP(MTT) DTMO CBCA Judges

JTR REVISIONS

Effective 10 April 2015

DEPENDENT/IMMEDIATE FAMILY (Employees Only)

A. General

1. Dependent and Immediate Family Member. The terms “dependent” and “immediate family” include the following named members of an employee's household at the time the employee reports for duty at a new PDS or performs authorized/approved OCONUS tour RAT or separation travel:

- a. Employee’s spouse. Any individual who is lawfully married (unless legally separated), including an individual married to a person of the same sex who was legally married in a state or other jurisdiction (including a foreign county), that recognizes such marriages, regardless of whether or not the individual’s state of residency recognizes such marriages. The term “spouse” does not include individuals in a formal relationship recognized by a State, which is other than lawful marriage. It also does not include individuals in a marriage in a jurisdiction outside the U.S. that is not recognized as a lawful marriage under U.S. law.;
- b. Employee’s domestic partner;
- c. Children of the employee, of the employee’s spouse, or of the employee’s domestic partner who are unmarried and under age 21 years or who, regardless of age, are physically or mentally incapable of self-support. See item A2 below.
- d. Dependent parents (including step and legally adoptive parents) of the employee, of the employee's spouse, or of the employee’s domestic partner. See Footnote 2 below.
- e. Dependent brothers and sisters (including step and legally adoptive brothers and sisters) of the employee, of the employee's spouse, or of the employee’s domestic partner who are unmarried and less than 21 years of age or who, regardless of age, are physically or mentally incapable of self-support. See Footnote 2 below.

FOOTNOTES

~~1. An employee and spouse at an OCONUS PDS assumed temporary custody of two grandchildren. The grandchildren’s parent was a member on active duty with a DoD Service in Iraq. The member (the parent) executed a special military power of attorney granting guardianship of the children to the children’s grandparent. GSBCA held that the power of attorney did not create a “legal guardianship” as that term is used to define dependent/immediate family members for the purpose of determining eligibility for relocation allowances. Since the term “legal guardianship” is not defined in the JTR, GSBCA turned to AZ state law (the state in which the power of attorney was executed and in which the member resided) for guidance. Under AZ law legal guardianship can be established only by judicial determination and the powers of attorney provided by the member were not sufficient to create guardianship. Since legal guardianship did not exist, the grandchildren could not be the employee’s immediate family members and the employee was not authorized travel and transportation costs and overseas allowances (TQSA) on their behalf. See [GSBCA 16337 RELO, 19 April 2004](#).~~

~~2. Generally, individuals are the employee’s dependents if they receive at least 51% of their support from the employee/employee's spouse; however, this percentage of support criterion must not be the decisive factor in all cases. These individuals also may be dependents for the purpose of this definition if they are members of the employee's household and, in addition to their own income, receive support (less than 51%) from the employee/employee's spouse without which they would be unable to maintain a reasonable standard of living.~~

2. Children. The term “children” includes:

- a. Natural offspring;
- b. Stepchildren;
- c. Adopted children;
- d. Grandchildren,
- e. Legal minor wards or other dependent children who are under legal guardianship of the employee/employee's spouse.
- f. A child born and moved after the employee's effective date of transfer because of advance stage of pregnancy, or other reasons acceptable to the DoD component concerned (e.g., awaiting school year completion by other children). See [50 Comp. Gen. 220 \(1970\)](#), and [66 Comp. Gen. 497 \(1987\)](#). See [Footnote 1 below](#).

B. Common Law Marriage. For the purpose of allowances authorized in these regulations, determination of an employee's spouse when a "common law marriage" is involved is addressed in several GSBCA and Comptroller General decisions. Some quotes from those decisions are as follows:

1. GSBCA quotes "Issues of marital status are determined by state law and the relationship of spouse exists if common law marriage is recognized by the law of the state in which the parties entered into such a marriage".
2. "Issues of marital status are determined by state law", James H. Perdue, [GSBCA 14122-RELO, 16 March 1998](#). Some states recognize common law marriage -- "[a] marriage that takes legal effect, without license or ceremony, when a couple live together . . . , intend to be married, and hold themselves out to others as a married couple. "Black's Law Dictionary 986 (7th ed. 1999)".
3. As we recognized in James H. Perdue, the burden of proof is on the claimant to establish the common law marriage. See [GSBCA 14122-RELO, 16 March 1998](#), and [GSBCA 15207-RELO, 19 May 2000](#). State law determines issues of marital status, and the relationship of spouse exists if common law marriage is recognized under the law of the state in which the parties entered into such a marriage. The following Comptroller General decisions address specific circumstances: [B-260688, 23 October 1995](#); [B-247541, 19 June 1992](#); [B-212900, 15 November 1983](#); [B-191316, 27 September 1978](#); [B-191316, 6 April 1978](#); [B-186179, 30 June 1976](#).
4. The validity of a common law marriage is determined by the law of the place in which it was contracted, and if valid there, it will be valid elsewhere, in the absence of contravention of positive law, or consideration of policy to the contrary. [B-186179, 30 June 1976](#); [B-191316, 27 September 1978](#).
5. Once the employee has submitted evidence in support of the common law marriage, it should be submitted to the appropriate Agency legal counsel for assistance in determining whether or not the putative spouse qualifies as a spouse under the specific state and/or Federal law. PDTATAC does not adjudicate these cases.

C. Missing Persons Act. A dependent, ICW the Missing Persons Act, is defined in par. 7825-A3 for transportation eligibility.

D. Emergency Leave Travel. See par. 7025-D.

E. Pertinent GSBCA Decisions. [GSBCA 15947-RELO, 31 March 2003](#); [GSBCA 15382-RELO, 20 December 2000](#); [GSBCA 15207-RELO, 19 May 2000](#); [GSBCA 14673-RELO, 9 December 1998](#); and [GSBCA 14122-RELO, 16 March 1998](#)

FOOTNOTES

- [*1. An employee and spouse at an OCONUS PDS assumed temporary custody of two grandchildren. The](#)

grandchildren's parent was a member on active duty with a DoD Service in Iraq. The member (the parent) executed a special military power of attorney granting guardianship of the children to the children's grandparent. GSBCA held that the power of attorney did not create a "legal guardianship" as that term is used to define dependent/immediate family members for the purpose of determining eligibility for relocation allowances. Since the term "legal guardianship" is not defined in the JTR, GSBCA turned to AZ state law (the state in which the power of attorney was executed and in which the member resided) for guidance. Under AZ law legal guardianship can be established only by judicial determination and the powers of attorney provided by the member were not sufficient to create guardianship. Since legal guardianship did not exist, the grandchildren could not be the employee's immediate family members and the employee was not authorized travel and transportation costs and overseas allowances (TOSA) on their behalf. See GSBCA 16337-RELO, 19 April 2004.

*2. Generally, individuals are the employee's dependents if they receive at least 51% of their support from the employee/employee's spouse; however, this percentage of support criterion must not be the decisive factor in all cases. These individuals also may be dependents for the purpose of this definition if they are members of the employee's household and, in addition to their own income, receive support (less than 51%) from the employee/employee's spouse without which they would be unable to maintain a reasonable standard of living.