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DECISION

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

FILE: B-201666

DATE: March 6, 1981

MATTER OF: Robert R. Rivinoja ^{Claim for} Real Estate Expenses }
Sales Tax on Real Estate Brokerage Fee }

DIGEST: Employee paid a 7 percent brokerage fee on sale of residence on relocation and a 5-1/2 percent sales tax on the brokerage fee as required by South Dakota law. Employee may be reimbursed the full amount of the commission and the sales tax paid on the brokerage fee under paragraph 2-6.2a of the Federal Travel Regulations as part of the cost of services rendered by the broker.

The issue presented in this case is whether an employee may be reimbursed the sales tax levied on the brokerage commission under South Dakota law on the sale of a residence incident to his transfer. Expense may be reimbursed as a part of the broker's fee for services rendered under paragraph 2-6.2a of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973).

The matter is presented here by a letter from Elizabeth A. Allen, Authorized Certifying Officer, Internal Revenue Service, Southwest Region, Dallas, Texas.

Mr. Robert R. Rivinoja, an employee of the Internal Revenue Service, was transferred from Rapid City, South Dakota, to Hobbs, New Mexico. Upon transfer he sold his residence in Rapid City upon which he paid a real estate commission or brokerage fee of \$5,985 representing 7 percent of the sale price and \$329.18 representing a sales tax of 5-1/2 percent on the brokerage fee for a total of \$6,314.18. The Internal Revenue Service allowed the \$5,985 brokerage fee but disallowed the sales tax thereon of \$329.18. The disallowance was based upon information supplied by the Midwest Region of IRS that it was not customary, nor the usual practice to charge sales tax on real estate commissions for that area.

By chapter 10-45-4, South Dakota Compiled Laws (SDCL 1967), as amended, the State of South Dakota imposes a 5 percent tax on the gross receipts of any person engaging in or practicing any business or profession in which the service rendered is of a

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professional, technical or scientific nature and is paid for on a fee basis. We understand that the local jurisdiction imposes an additional 1/2 percent tax and that these two taxes account for the 5-1/2 percent tax paid by Mr. Rivinoja on the real estate commission for the sale of his former residence.

We have been advised by the Sioux Falls, South Dakota Service Office of Region VIII, Field offices, Department of Housing and Urban Development (HUD), that the sales tax on real estate commissions is customarily paid by the seller in the State of South Dakota.

Payment of travel and relocation expenses of civilian Government employees is governed by the Federal Travel Regulations. Paragraph 2-6.2a thereof provides in pertinent part:

"A broker's fee or real estate commission paid by the employee for services in selling his residence is reimbursable but not in excess of rates generally charged for such services by the broker or by brokers in the locality of the old official station. * * *"

In the Matter of David R. Wiser, 58 Comp. Gen. 211 (1979), we determined that a tax levied as a gross receipts tax on a real estate commission was reimbursable under FTR para. 2-6.2a as part of the cost of services rendered by the broker incident to the sale of the house rather than as a tax on the property. In so holding we found that the tax was not a tax on the property itself nor a transfer tax within the meaning of FTR para. 2-6.2d. Compare Stephen R. Hopkins, B-195593, January 22, 1980, and cases cited therein.

Accordingly, since it has been determined by the Sioux Falls, South Dakota Service Office of Region VIII, Field Offices of HUD that it is customary in the State of South Dakota for the real estate broker to charge the seller the sales tax on the broker's commission in

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addition to the broker's commission, Mr. Rivinoja may be reimbursed for the amount claimed. The reclaim voucher may be certified for payment.

Milton J. Aorolan

Acting Comptroller General
of the United States