

DECISION

17760 *Ridinger*
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-201591

DATE: April 16, 1981

MATTER OF: W. Carl Linderman - *[Claim form]* pro rata reimbursement
of real estate expenses

DIGEST: Transferred employee sold residence on one acre lot to single purchaser as two separate parcels to enable buyer to obtain financing on portion of land containing residence. Fact that portion of land not containing residence was too small to use as separate building site and fact that one-acre lot size was common acreage for single family residences in area rebuts presumption raised by separate sale that smaller parcel was land in excess of that reasonably related to the residence site within meaning of paragraph 2-6.1h of the Federal Travel Regulations (FTR). Realtor's fees paid for sale of both parcels may be reimbursed.

We have been asked by a Certifying Officer for the Department of Agriculture to determine whether Mr. W. Carl Linderman may be reimbursed a \$300 realtor fee incurred in connection with the sale of his former residence.

Mr. Linderman, a Department of Agriculture employee, was transferred from Pineville, Louisiana, to Pocatello, Idaho, in February 1980. In connection with that move, Mr. Linderman sold his Pineville residence which was situated on a one acre parcel of land. To enable the buyer to qualify for a low income, low interest loan, Mr. Linderman sold his residence to a single purchaser by means of two separate but related transactions. He sold the smaller portion of the land, consisting of less than one-half acre, to the buyer for cash. This enabled the buyer to purchase the residence with the remaining land at a price that was sufficiently reduced to qualify for the financing sought.

The Department of Agriculture has reimbursed Mr. Linderman for the realtor's fee paid in connection with the sale of the residence portion of the land. The agency is in doubt, however, whether the \$300 realtor's fee associated with the smaller portion of land may be reimbursed. In this regard, the Certifying Officer refers to our holding in 54 Comp. Gen. 597 (1975) and to the following provision at paragraph 2-6.1f of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973):

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"f. Payment of expenses by employee - pro rata entitlement. * * * The employee shall also be limited to pro rata reimbursement when he sells or purchases land in excess of that which reasonably relates to the residence site."

In arguing that the smaller portion of land was reasonably related to the residence site, Mr. Linderman points out that the residence was located in a rural area where septic system limitations had the practical effect of requiring him to sell the entire one-acre parcel to one buyer. His assertion that the smaller portion is too small to be used as a residence site has been confirmed by the agency. Information obtained from the local county supervisor indicates that until recently the State of Louisiana had required a minimum of one acre of land to support a septic system. Subject to percolation tests, that requirement has recently been relaxed to permit a one-half acre parcel to support a single septic system.

In 54 Comp. Gen. 597, we discussed the proration requirement of the above-quoted regulation insofar as it relates to an employee's purchase or sale of a large tract of land. Where a transferred employee buys or sells a large tract of land, we held that FTR para 2-6.1f limits reimbursement of real estate expenses to those costs associated with conveyance of the residence itself and such land as reasonably relates to the residence site. The decision details those factors that may be considered in determining how much of the land relates to the residence site and how much is excess. That decision does not itself require proration where the employee purchases or sells a residence located on a reasonably small parcel of land that is comparable in size to those on which other single family dwellings in the area are situated.

We have recognized, in a line of decisions related to 54 Comp. Gen. 597, that where an employee divides his property into separate parcels for sale purposes, there is a strong presumption that parcels other than that on which the house is located do not relate to the residence site. B-171493, February 2, 1971. Where the separate parcels are sold to separate purchasers, we have treated that presumption as compelling, regardless of the size of the parcels involved. See Franklin J. Rindt, B-199900, February 10,

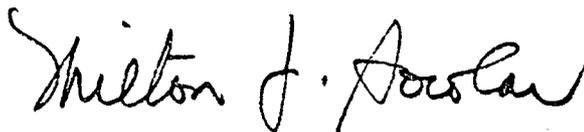
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1981, and Harold J. Geary, B-188717, January 5, 1978. Where the separate parcels are conveyed to an individual purchaser, however, we have treated the separate transactions as giving rise to a presumption that the parcel not containing the residence is excess, thus warranting consideration of the factors discussed in 54 Comp. Gen. 597.

In William C. Sloan, B-190607, February 9, 1978, we considered the claim of an employee who had divided his land into two parcels. Within a period of 3 days, he sold the two-acre parcel on which the residence was situated and the adjacent five-acre parcel to the same purchaser. In that case, we upheld the agency's finding, based on the factors set forth in 54 Comp. Gen. 597, that the five-acre parcel was not related to the residence site. In part, the agency's finding was based on the fact that one acre was generally regarded as an adequate building site in the area and the fact that the five-acre parcel could be developed separately from the parcel containing the residence.

Consistent with the above decisions, the fact that Mr. Linderman divided his residence and the one-acre lot into two parcels for the purpose of sale raises a presumption that he conveyed land in excess of that which reasonably relates to the residence site. However, the information obtained by the Department of Agriculture regarding land use in the vicinity of Mr. Linderman's residence reasonably rebuts any inference that any part of the land sold did not reasonably relate to the residence site. In fact the separate conveyances were part of a single transaction in which the entire one-acre parcel was transferred to a single purchaser for use as a residence.

Since the two realtor's fees paid by Mr. Linderman do not exceed the fee he would have paid to transfer the one acre as a single parcel, he may be reimbursed the \$300 amount claimed.



Acting Comptroller General
of the United States