

Mr. Dunn

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DECISION



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

FILE: B-199193

[Claim for]

DATE: April 22, 1981

MATTER OF: Richard N. Adair - Pro Rata Reimbursement
of Real Estate Expenses

- DIGEST:
1. In order to expedite sale, transferred civilian employee sold property at old duty station in two parcels to two separate buyers. Claim for real estate expenses of parcel containing house was paid but expenses associated with parcel not containing house were disallowed by Treasury. Reclaim voucher for real estate expenses of parcel without house may not be paid since parcel of land other than that upon which house is located does not reasonably relate to residence site as required by para. 2-6.1f of Federal Travel Regulations (FTR).
 2. Employee may be reimbursed for recording fees if they are customarily paid by purchaser in the area and do not exceed amounts customarily charged in the locality. FTR para. 2-6.2c. Employee's residence for the allowance of expenses incurred in connection with residence transactions may be a mobile home and/or the lot on which it is or will be located. FTR para. 2-6.1b.

This decision is in response to a request for an advance decision from Janis P. Russo, authorized certifying officer, Department of the Treasury, Internal Revenue Service (IRS), as to whether a reclaim voucher submitted by Mr. Richard N. Adair, an employee of the Southwest Region, IRS, may be paid. The reclaim voucher is for reimbursement of expenses incurred in the sale of land in connection with the change of Mr. Adair's permanent duty station.

At the time of his transfer, Mr. Adair owned a house which was situated on approximately six acres of land. Although the claimant listed the entire

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B-199193

property for sale, he was unable to sell the entire parcel due to poor economic conditions. Upon the advice of his realtor, Mr. Adair subsequently divided the property into two sections in order to enhance his prospects for a sale. The house and two acres were sold at a price of \$50,000 under a contract of sale dated May 1, 1979. The remaining 3.9 acres sold to a different buyer for \$16,000 under a contract of sale dated June 4, 1979.

Mr. Adair has already been reimbursed for the expenses incurred in selling the house and two acres. The reclaim is for the real estate Commission and miscellaneous costs in connection with selling the adjacent 3.9 acres. Pursuant to our decision in 54 Comp. Gen. 597 (1975), the claim was submitted to our Office for review and disposition.

Paragraph 2-6.1f of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973) provides in pertinent part as follows:

"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 construing the above-quoted regulation, we stated in 54 Comp. Gen. 597, 598, supra: "The crucial point in this directive is the determination of how much land 'reasonably relates to the residence site' and how much land of the purchase or sale is 'in excess.'" We further stated that a determination should generally be made by the agency concerned, and we set forth examples of the kinds of considerations which agencies should take into consideration in arriving at such determination.

Mr. Adair contends that the parcel of land which did not contain the house was reasonably related to the residence site. In support of his contention, he says that in the locality of the property:

B-199193

"* * * a large amount of land is necessary for health reasons. Each individual house in the area must have its own water supply (well) and septic system. * * * Since the water table level in that area is at ground level for a large part of the area, the septic system leach field must cover a large area and to avoid water contamination, small city lots or even one or 2 acres is considered inadequate land. * * *"

We have examined the record and do not agree that the land which was sold separately from the house was reasonably related to the residence site as required by the above-quoted regulation. Particularly, we note that even in view of the alleged water and septic system requirements of the locality in question that the purchaser of Mr. Adair's house was able to meet those needs with just the two acre lot, and the purchaser of the four acre parcel owned a lot measuring only one acre adjoining the Adair property.

In B-171493, February 2, 1971, we ruled upon a claim involving a sale in a similar factual situation. We held that where the employee has divided his property into separate parcels for sale purposes, it must be concluded that parcels other than that upon which the house is located do not relate to the residence site. Therefore, the certifying officer in the present case was correct in reducing reimbursement of real estate expenses on a pro rata basis in accord with the ruling in 54 Comp. Gen. 597, supra. See also Franklin J. Rindt, B-199900, February 10, 1981.

The IRS disallowed Mr. Adair's claim for a recording fee of \$4 incident to the purchase of his mobile home lot, apparently on the basis of its regulations. The IRS regulations are not a part of the record. A similar recording fee of \$3 was allowed for the mobile home purchase. However, FTR para. 2-6.2c specifically allows reimbursement for recording fees if they are

B-199193

customarily paid by the purchaser and if they do not exceed amounts customarily charged in the locality of the residence. Further, FTR para. 2-6.1b states that an employee's residence for the allowance of expenses incurred in connection with residence transactions may be a mobile home and/or the lot on which such mobile home is located or will be located. Therefore, Mr. Adair's claim for reimbursement of recording fees may be certified for payment if the requirements of FTR para. 2-6.2c are satisfied. 58 Comp. Gen. 786, 788 (1979). To the extent that the IRS regulation may be inconsistent with this holding, necessary changes should be made.

Action on the voucher should be taken in accordance with the above.



Acting Comptroller General
of the United States