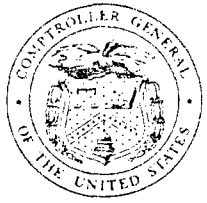


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DECISION



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

FILE: B-200173

DATE: April 9, 1981

MATTER OF: Albert Popp ^[Claim For] Pro Rata Reimbursement
of Real Estate Expenses]

DIGEST: Transferred employee sold 80 acre farm on which he resided at old duty station in two parcels. One parcel was 66 acres of agriculture and swamp land and the other was 14 acres containing residence, garage, storage shed, machine shed and barn. Real estate expenses attributable to sale of 14 acre parcel are reimbursable to extent authorized by FTR 2-6 and to extent it is determined they are attributable to sale of real estate reasonably related to residence site. This determination must initially be made by the agency in accordance with guidelines prescribed by this Office. 54 Comp. Gen. 597 (1975).

This action is in response to a request for an advance decision by a certifying officer of the United States Customs Service, Department of the Treasury, concerning the claim of Mr. Albert Popp for real estate expenses incurred incident to a change of permanent duty station.

Mr. Popp was transferred from his old duty station in Green Bay, Wisconsin, to Pensacola, Florida. At the time of his transfer he owned and resided on an 80 acre farm with a house, garage, storage building, machine shed and barn. He put his property up for auction and sold 66 acres of agriculture and swamp land to one buyer for \$36,000 and the other 14 acres with all the buildings for \$53,500 to another buyer. Mr. Popp filed a claim for real estate expenses for the entire sale in the amount of \$6,053.64 which included broker's commission - \$5,370, continuation of abstract - \$84, cancellation of

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title policy commitment - \$167.50, deed drafting - \$50, surveying fees - \$250, transfer fees - \$89.50, water test - \$3, septic tank test - \$35, and registered mailing of abstract to buyer's lender - \$4.64.

The certifying officer questions how much of Mr. Popp's real estate expenses are reimbursable. In this regard he questions whether the real estate expenses incurred in selling the 66 acre lot are reimbursable. He also questions whether the real estate expenses in connection with the sale of 14 acres which includes the house are fully reimbursable.

The reimbursement of expenses incurred by a transferring employee in selling his residence is governed by 5 U.S.C. § 5724a(a)(4) and the implementing regulation in chapter 2, part 6 of the Federal Travel Regulations. Paragraph 2-6.1f of these regulations provides in pertinent part as follows:

"Payment of expenses by employees - 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."

The application of this regulation is considered at some length in the Matter of K. Diane Courtney, B-182203, January 16, 1975, published at 54 Comp. Gen. 597. This decision holds that it is the responsibility of the agency concerned to make the initial determinations as to what portion of the real estate sold reasonably relates to the residence site and as to the amount of the claimed expenses allowable for that portion. Set forth are examples of matters to be taken into account by the agency in making these determinations such as prevailing and customary practices in the locality, zoning laws, past, present, and

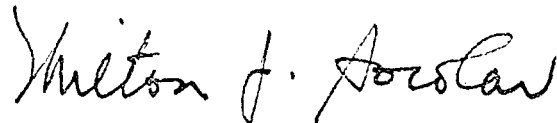
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potential future use of the land, local requirements concerning waste disposal systems and percolation, location, and billing practices of real estate brokers, attorneys, and surveyors. Further the decision recommends that the agency obtain the aid of experts in making these determinations.

It is our opinion that the principles set forth in 54 Comp. Gen. 597 should be applied to the 14 acre parcel containing the residence in the case at hand. Therefore the Customs Service should initially make the requisite determinations in accordance with these principles and in accordance with the provisions of FTR 2-6.

As to the 66 acre parcel of agriculture and swamp land, we are of the opinion that FTR 2-6.1f prohibits reimbursement of the amount of the claimed expenses attributable to sale of it. We have consistently held that when a transferred employee sells his land in two parcels, that parcel which does not contain his residence is in excess of that which reasonably relates to the residence site. Richard E. Lincoln, B-186931, September 2, 1976; Alfred W. Eipper, B-186527, February 9, 1977; Harold J. Geary, B-188717, January 25, 1978; William C. Sloane, B-190607, February 9, 1978. Moreover, while the exact amount and location are not specified, the file indicates that some of the land sold by Mr. Popp was leased to a third party and producing income at the time of the sale. Clearly this land was in excess of that which reasonably relates to the residence site.

Mr. Popp's claim should be adjudicated in accordance with the foregoing. If after applying the principles set forth in this and the cited decisions, the agency still has doubts about the propriety of any payment or if Mr. Popp takes exception to the agency's determinations, the matter may be referred here again - but it must be accompanied by sufficient information of the type described to enable this Office to reach a decision.



Acting Comptroller General
of the United States