



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Barry L. Nadler - Real Estate Expenses - State  
Excise Tax

**Matter of:**

**File:** B-231537

**Date:** November 14, 1988

### DIGEST

A transferred employee constructed a residence at his new duty station and claims reimbursement for a state excise tax imposed on the sale of construction services. Under paragraph 2-6.2d of the Federal Travel Regulations, only those expenses resulting from construction which are comparable to expenses allowable in connection with the purchase of an existing residence may be reimbursed. Since the tax is not imposed on the purchase price of an existing residential property, it is unique to the construction process and may not be reimbursed.

### DECISION

This decision is in response to a request from an Authorized Certifying Officer, Federal Communications Commission (FCC), concerning the entitlement of Mr. Barry L. Nadler to be reimbursed certain real estate expenses incident to a permanent change of station in November 1987. We hold that he may not be reimbursed for the following reasons.

### BACKGROUND

Mr. Nadler, an employee of the FCC, was transferred from Fort Lauderdale to Vero Beach, Florida. Incident to that transfer, he purchased a lot in Vero Beach and had a residence constructed on it. Part of the construction expense included a Florida state sales tax of \$1,910.99, for which he claimed reimbursement. The claim was disallowed by the agency.

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Mr. Nadler contends that it should be reimbursed because it is a tax imposed by Florida on professional services.<sup>1/</sup> The agency points out that under the applicable travel regulations, expenses which result from construction of a residence are not reimbursable but, in general, taxes paid by an employee incident to transfer are payable.

#### RULING

The provisions governing reimbursement for real estate expenses incident to a transfer of duty station are contained in 5 U.S.C. § 5724a (1982) and regulations issued pursuant thereto. Those regulations are contained in part 6 of chapter 2, Federal Travel Regulations (Supp. 1, Sept. 28, 1981), incorp. by ref., 41 C.F.R. § 101-7.003 (1985) (FTR), as amended by Supp. 4, Aug. 23, 1982. Paragraph 2-6.2d(1)(j) of the FTR provides that reimbursable expenses include expenses in connection with construction of a residence "which are comparable to expenses that are reimbursable in connection with the purchase of existing residences." Paragraph 2-6.2d(2)(f) includes among nonreimbursable expenses those "[e]xpenses that result from construction of a residence."


The issue to be resolved is whether the particular real estate transaction expense claimed is one which would have been incurred by the employee had he purchased an existing residence. If the expense incurred relates particularly to the construction process, it is not allowable. Richard T. Bible, B-208302, July 17, 1984. For example, in Jack T. Brawner, B-192420, Aug. 27, 1979, we ruled that the cost of blueprints, plot plans, a certificate of elevation, building permits, development fees, and building site trash removal were considered nonreimbursable since they related specifically to the construction process and would not have been incurred had the employee purchased an existing residence.

According to the documents in the file, the Florida tax law imposes an excise tax on the sale of services. This includes construction services and, as it relates to real estate, a tax on services performed by an agent or broker and on services performed by a builder for improvements to real property. There is nothing in the Florida law which imposes such excise tax on the actual purchase price of developed residential property.

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<sup>1/</sup> The agency report notes that the law was repealed effective January 1, 1988.

It is our view, therefore, that had Mr. Nadler purchased an existing residence he would not have incurred this tax. Therefore, since the expense incurred relates specifically to the construction process, FTR, para. 2-6.2d prohibits reimbursement.

*for*   
Comptroller General  
of the United States