

13444 DLM-1
Mr. Kirk Petrick



DECISION

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

FILE: B-197567 *Claim for Reimbursement of* DATE: April 15, 1980

MATTER OF: *PN* Robert A. McCrea - Relocation Expense - Tax on
"deferred gain" from Residence Sale

DIGEST: Employee may not be reimbursed Oregon State income tax on "deferred gain" from sale of residence at old duty station. The tax was imposed only on a person selling Oregon residence and moving out of State, such as employee. The tax arose because of the employee's gain in selling his home and was not based on the sales transaction itself. Neither 5 U.S.C. § 5724a(a)(4) nor Federal Travel Regulations authorize reimbursement of income taxes arising from real estate transactions.

J. C. Stengle, Authorized Certifying Officer, National Finance *AGC01435*
Center, Department of Agriculture, asks whether Mr. Robert A. McCrea,
a Forest Service employee, may be reimbursed an Oregon State tax *AGC00034*
incurred after sale of his residence incident to change of his
permanent duty station. *ENG00339*

Mr. McCrea sold his residence in Klamath Falls, Oregon, when he transferred from that permanent duty station to Bonners Ferry, Idaho, on May 23, 1978. Although the Federal income tax on the gain was postponed because he purchased a residence in Bonners Ferry for more than the sale price of the Klamath Falls residence, his 1978 Oregon State income tax was increased by \$556.92 because of the gain from the sale. Mr. McCrea has submitted to us a State income tax instruction sheet explaining in item 25 that if an Oregon residence is sold and a new residence purchased outside the State, 50% of the "deferred gain" was taxable if the sale was before November 1, 1978, and 40% if the sale was after that date. The "deferred gain" was the same as that entered for Federal tax purposes on Internal Revenue Service Form 2119, line 13, entitled "Gain on which tax is to be deferred." This entry in the amount of \$13,311.69 reflects the net gain Mr. McCrea accrued from buying and selling his Klamath Falls residence. The Oregon State tax was imposed on 50% of this amount, or \$6,655.84, as indicated on line 25 of Mr. McCrea's 1978 State income tax return.

To be reimbursable as a real estate expense authorized by 5 U.S.C. § 5724a(a)(4), the tax must be reasonably necessary to the

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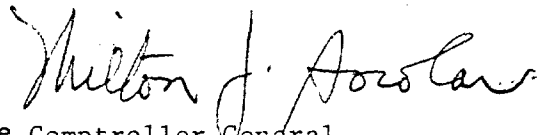
B-197567

buying or selling transaction itself, such as a transfer tax. See Federal Travel Regulations, paragraph 2-6.2d (FPMR 101-7, May 1973). Reimbursement is disallowed for taxes not directly related to the transaction which arise from the employee's investment preferences or the prices of purchase and sale. See June M. Lowry, B-194860, October 15, 1979. Further, reimbursement of such taxes must be disallowed as a miscellaneous relocation expense. Paragraph 2-3.1c of the Federal Travel Regulations excludes reimbursement for losses in selling or buying real property and cost items related thereto (subparagraph (1)) and for higher income, real estate, sales, or other taxes as the result of establishing residence at the new station (subparagraph (6)).

In Mr. McCrea's case the net gain from purchase and sale of the Klamath Falls residence on which the Oregon State tax was imposed depended on many circumstances, some arising before his permanent change of station. To compute the net gain, the purchase price was increased by the value of any improvements and additions, decreased by any fire or casualty losses, and reduced by depreciation between the time of purchase and sale. The resulting amount was subtracted from the sale price, which was affected by the change of market value between the time of purchase and sale. Consequently, the tax was based upon facts and circumstances unrelated to the sale transaction itself, and it arose from Mr. McCrea's financial decisions and investment preferences resulting in a "deferred gain".

Mr. McCrea argues that the tax arose only because he was transferred out of state and that he would not have had to pay the tax if he had remained in the state of Oregon. He believes that an employee should not have to suffer a loss like this when he is transferred in the interest of the Government. In fact, there is no showing that there was any out-of-pocket expense to Mr. McCrea because he realized a sizeable gain on the sale of his Oregon residence. In any event, whatever cost or loss Mr. McCrea believes he may have suffered may not be reimbursed as a necessary relocation expense under the statute, 5 U.S.C. § 5724a(a)(4). See June M. Lowry, supra.

Accordingly, Mr. McCrea may not be reimbursed for the Oregon deferred gain tax.



For The Comptroller General
of the United States