

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

S. Kramer  
PL I

GAO 00411

8811

FILE: B-188552

DATE: January 10, 1979

MATTER OF: David R. Wiser - [Real Estate Commission Taxes]

**DIGEST:** The real estate listing agreement signed by a transferred employee incident to sale of his residence at his old duty station required payment of 6 percent commission on selling price, plus the applicable gross receipts tax on the commission. Employee may be reimbursed for the tax paid to the broker under para. 2-6.2a, Federal Travel Regulations, if it is customary in area for a tax to be passed through to seller. Tax should be viewed as part of cost of services rendered by real estate broker, since it is neither levied on property nor included in purchase price. 54 Comp. Gen. 93 (1974) distinguished.

AGC 00010

By letter dated March 7, 1977, Edwin J. Fost of the Drug Enforcement Administration (DEA), Department of Justice, requested an advance decision as to whether Mr. David R. Wiser, an employee of DEA, is entitled to be reimbursed for the tax he paid on the broker's commission when he sold his home in Albuquerque, New Mexico, incident to his transfer to Miami, Florida.

By Travel Order B-0271, April 29, 1976, Mr. Wiser was transferred from Albuquerque to Miami. His broker's commission and other expenses associated with the sale of his residence in Albuquerque have been reimbursed. However, DEA disallowed the amount of \$118.58 of the broker's fee, representing a 4 1/4 percent tax on the commission. This was done on the basis of our decision B-171878, August 4, 1974, published at 54 Comp. Gen. 93. Mr. Wiser has reclaimed the \$118.58 on the ground that the cited decision is not applicable to the sale of a residence and that the fee (tax) is charged by all real estate firms. The Federal Travel Regulations (FTR), FPMR 101-7 (May 1973) in paragraph 2-6.2a allows reimbursement of a broker's fee or real estate commission paid by the employee for services in selling his residence, but not in excess of the rates generally charged for such services in the locality of the old official station.

The claimant's contract or listing agreement with his real estate broker states in pertinent part:

~~003190~~

~~Handwritten signature~~  
abc

B-188552

"I agree to pay Broker a commission of 6 per cent of the selling price plus applicable New Mexico Gross receipts tax on said commission \* \* \*."

We note that this listing agreement appears to be a standard agreement that was prepared by the Albuquerque Board of Realtors. The gross receipts tax referred to is imposed by the State of New Mexico and the city of Albuquerque upon the real estate broker and is measured by the amount of the commission earned from a sale. According to a letter dated July 21, 1976, from Pioneer National Title Insurance, the 4 $\frac{1}{4}$  percent tax on the realtor's commission is charged by all real estate firms in Albuquerque.


In our decisions concerning reimbursement of taxes paid in connection with the relocation of an employee, we have attempted to determine whether or not the tax is a transfer tax and hence reimbursement under FTR para. 2-6.2d. Cf. B-178943, September 17, 1974, and 54 Comp. Gen. 93 (1974). In doing so we look to the local interpretation of the tax in question, rather than viewing the tax from the perspective of its impact on the employee and then applying a national standard. 54 Comp. Gen. 93 (1974).

We do not believe that the above cases are applicable here. In those cases, the tax was included in the purchase price of a residence and was measured by the value of the property. Since the tax was, in effect, levied on the property we had to determine whether or not it was a transfer tax within the meaning of the FTR. In the instant case, however, the tax is levied neither on the property nor on either party to the sale, but on the value of services performed by a third party, the real estate broker. As such, we believe it is more appropriate to treat the tax imposed here as part of the cost of the services rendered by the broker incident to the sale of the house rather than as a tax on the property.

As stated above, under FTR para. 2-6.2a, a transferred employee may be reimbursed for the amount of real estate broker's commission paid on the sale of his home, but not more than the amount generally charged in the locality. According to the letter from Pioneer Title Insurance, all the real estate brokers in Albuquerque pass on the gross receipts tax as part of the commission charged. Also, as we noted above, the listing agreement is a standard form agreement, and provides for the pass-through of the tax.

B-188552

Accordingly, unless it is determined by the appropriate office of the Department of Housing and Urban Development that it is not customary in Albuquerque for the real estate broker to charge the seller the gross receipts tax in addition to the broker's commission, Mr. Wiser may be reimbursed for the amount claimed.

  
Deputy Comptroller General  
of the United States