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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

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July 6, 1983

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Mr. William K. Gilmore
United States Department of the Interior
Bureau of Land Management
P.O. Box 10226
Eugene, Oregon 97440

Dear Mr. Gilmore:

This is in response to your letter of May 27, 1983, requesting our opinion regarding reimbursement for real estate transaction costs incurred in connection with the sale of a residence following a transfer of duty station. As you are aware, this letter does not constitute a formal, binding decision of this office, but the information provided may be useful to you.

You have described the situation as follows: In November 1980, you were transfered from the Bureau of Land Management's (BLM) Bishop, California Area office to BLM's Oregon State Office, in Portland. You did not sell your Bishop residence at the time of your reassignment to Portland due to 1) real estate market conditions, and 2) the terminal (i.e. project-oriented) nature of your new position. The Portland project, although terminal, was expected to continue at least 2 years, with no commitment that you would return to Bishop at the completion of the project. Further, Portland was, upon transfer, made your official duty station.

Subsequently, in September 1982, the Portland position was eliminated, and you were reassigned to BLM's Vale, Oregon District office. The position in Vale was also project-oriented and terminal. You have recently been reassigned to BLM's Eugene, Oregon District office (effective June 12, 1983), an assignment with no projected termination date.

At this time, you plan to sell your house in Bishop. The Travel Voucher Audit Section of BLM's Denver Service Center has advised you that reimbursement for real estate transaction costs on the proposed sale would not be allowable since the house is not your current residence. You feel that you are entitled to reimbursement because: 1) you did not solicit the transfers to Vale and to Eugene (your position was

526179

eliminated in both instances), and 2) no real estate transaction costs have been incurred in the intervening moves.

The reimbursement of Federal civilian employees for real estate transaction costs incurred in selling a residence following a transfer of duty station is governed by the Federal Travel Regulations, FPMR 101-7 (September 1981)(FTR). Under FTR para 2-1.4i, in order to be reimbursed for the expenses of selling a residence at your old duty station, the house must be the residence from which you regularly commute to and from work. The FTR's issued under the authority of 5 U.S.C. § 5724a (1976), have the force and effect of law, and may not be waived or modified in an individual case. Alister L. McCoy, B-195556, February 19, 1980.

Under our decisions, the requirement that, to qualify for reimbursement of real estate transaction costs, the residence sold must have been that from which the employee regularly commuted to and from work, has been strictly enforced. See Bernard L. Singer, B-202758, February 22, 1982; Jerry O. Hays, B-197501, May 12, 1980. You last regularly commuted from the house which you plan to sell while working in Bishop. Thus, the only transfer of duty station relevant to determining your eligibility for reimbursement of real estate transaction costs incurred in selling that house would be the initial transfer from Bishop to Portland, in November 1982. See Jack B. Dugwyler, Jr.,B-200749, December 29, 1980; Alister L. McCoy, cited above. This is significant because of time limitations which have been placed on such transactions.

Paragraph 2-6.1.e of the FTR limits the time within which a Federal employee must complete the sale of his or her residence following a transfer of duty station in order to qualify for reimbursement of real estate transaction costs. This provision, like the commuting rule discussed above, has been held to have the force and effect of law, and, therefore, cannot be waived or modified. Ervin A. Keith, B-204443, April 5, 1982; Jerry O. Hays, cited above. It has been strictly enforced even when the sale of a residence was delayed by unfavorable housing market conditions. James P. Moore, B-207730, July 7, 1982.

In November 1980, when you were transferred from Bishop to Portland, the time limit for completion of the sale of a residence was one year after the date on which you had reported for duty at the new official duty station. This limitation period could have been extended for a maximum of one additional year, at the discretion of the agency. See FTR para. 2-6.1e November 1981. Under this regulation, it appears that the latest date by which you would have had to have completed the sale of your Bishop residence in order to qualify for reimbursement of real estate transaction costs would have been November 1982.

This provision, however, was amended, by GSA Bulletin FPMR A-40, General Supplement 4, effective October 1, 1982. Section 2-6.1.e now reads:

"e. Time limitation

"(1) Initial period. The settlement dates for the sale and purchase or lease termination transactions for which reimbursement is requested are not later than 2 years after the date that the employee reported for duty at the new official station.

"(2) Extension of time limitation.

"(a) Upon an employee's written request, the 2-year time limitation for completion of the sale and purchase or lease termination transactions may be extended by the head of the agency or his/her designee for an additional period of time not to exceed 1 year.

"(b) The employee's written request should be submitted to the appropriate agency official(s) as soon as the employee becomes aware of the need for an extension but before expiration of the 2-year limitation; however, in no case shall the request be submitted later than 30 calendar days after the expiration date unless this 30-day period is specifically extended by the agency.

"(c) Approval of this additional period of time shall be based on a determination that extenuating circumstances, acceptable to the agency concerned, have prevented the employee from completing the sale and purchase or lease termination transactions in the initial time frame and that the residence transactions are reasonably related to the transfer of official station.

"(3) Applicability. In addition to being applicable to those employees transferred on or after the effective date of this supplement, the provisions for extension of the time limitation contained in (2), above, shall also be applicable to employees whose time limitation will not have expired prior to the issuance date (signature date) of this supplement 4 to these regulations; provided that when such an extension is approved by an agency, relocation entitlements and allowances shall be determined by using the entitlements and allowances prescribed by regulations in effect on the employee's effective date of transfer and not the entitlements and allowances in effect at the time the extension of the time limitation is approved."

Note that under revised FTR para. 2-6.1e(3), the new time limitation provisions are made applicable to an employee whose time limitation has not expired as of the issuance date of these amendments, October 1, 1982. The discretionary 1-year extension under the prior regulations, if granted, would have extended your original limitation period to November 1982, bringing you within the amended provisions of paragraph 2-6.1e(3). Under the October 1, 1982 amendments, the maximum time period possible, with the permissible 1-year extension, is 3 years. In your case, this could extend the time period within which, upon completion of the sale of your Bishop residence, you could be eligible for reimbursement of real estate transaction costs, to November 1983.

You should also note that revised FTR para. 2-6.1e (2)(b) states that an employee should request the 1-year extension within thirty days of the expiration of the 2-year limitation period. The agency, however, may extend the time within which a request for an extension may be submitted. Additionally, paragraph 2-6.1e(2)(c) requires a showing of extenuating circumstances, acceptable to the agency, before the permissible 1-year extension may be granted. You may present arguments as to the housing market conditions, and your uncertainty regarding future moves to the agency when requesting extensions as outlined below.

In sum, to qualify for reimbursement of real estate transaction costs, you would need to accomplish the following steps:

(1) Request and receive the permissible 1-year extension to the 1-year limitation period, pursuant to the original regulation. See the earlier version of FTR para. 2-6.1e.

(2) Request and receive an enlargement on the time within which may request an extension of the 2-year limitation period under the amended regulations. See revised FTR para. 2-6.1e (2)(b).

(3) Request and receive, upon a showing of extenuating circumstances, the 1-year extension permitted by revised FTR para. 2-6.1e(2)(a) and (c).

(4) If the above extensions are granted by the agency, complete the sale of your house in Bishop within the allotted 3-year time period.

Finally, it must be noted that each of the necessary extensions involves the discretion of your agency, BLM. While our decisions have strictly enforced the requirement that the sale of the house be completed according to the time limitations and other requirements imposed by the applicable regulations, we have encouraged agencies to be liberal in the granting of permissible extensions, even retroactively. See George F. Rakous, Jr., 57 Comp. Gen. 28 (1977). Thus, you may wish to submit written requests for the necessary extensions to BLM. If subsequent events indicate that such a step is appropriate, you may file a formal claim with this office.

Sincerely yours,

Robert L. Higgins

Robert L. Higgins
Assistant General Counsel

Enclosures

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