

DECISION

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

My Gibson
P. J. P. I.

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FILE: B-204995

DATE: July 20, 1982

MATTER OF: Sidney C. Smith -- Real estate expenses

DIGEST: A transferred employee who purchased a residence at his new official station claims reimbursement for real estate broker's fee, loan transfer fee, and cost of obtaining "certificate of taxes due." None of the expenses claimed are reimbursable since: (1) the broker's fee was incurred incident to purchase and covers services customarily performed by real estate brokers; (2) the loan transfer fee is a finance charge within the meaning of Regulation Z, 12 C.F.R. §226.4(a) (1981); and (3) the fee for certification of taxes is not customarily paid by the buyer in the relevant locality.

Elizabeth A. Allen, an authorized certifying officer of the Internal Revenue Service (IRS), Southwest Region, Dallas, Texas, requests a decision on the reclaim voucher of Mr. Sidney C. Smith for certain real estate expenses incurred in connection with the purchase of a residence in Denver, Colorado, incident to a permanent change of station. Specifically, Mr. Smith requests reimbursement in the amount of \$540 representing fees paid to a real estate broker (\$500), a loan transfer fee (\$35), and the cost of obtaining a "certificate of taxes due" (\$5). Based on the provisions of paragraph 2-6.2 of the Federal Travel Regulations, FPMR 101-7 (May 1973)(FTR), we hold that the reclaimed expenses may not be reimbursed.

The IRS denied Mr. Smith's claim for broker's fees allegedly representing costs of contract preparation and "miscellaneous expenses" because Mr. Smith failed to provide an itemized account of the broker's services. Reimbursement for the loan transfer fee was denied on the basis that such fee is similar to a loan origination fee which is classified as a finance charge under Regulation Z, 12 C.F.R. §226.4(a)(1981). The agency denied Mr. Smith's claim for the cost of obtaining a "certificate of taxes due," based on information received from the Denver, Colorado, area office of the Department of Housing and Urban Development (HUD), indicating that in Colorado it is customary for the seller to pay for a tax certificate.

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Mr. Smith reclaimed the disallowed amounts and submitted with his voucher the real estate broker's statement itemizing services performed. Further, Mr. Smith disputed the agency's determination that a loan transfer fee is nonreimbursable on the basis that it is similar to a loan origination fee, contending that a loan transfer requires less processing time and effort than does loan origination. With respect to the tax certification fee, Mr. Smith stated that he was required to pay for the certificate and that, "different parts of the country have different rules as to what the buyer and seller pay."

IRS denied reimbursement of the reclaimed amounts for the same reasons as in its original determination. In addition, the agency noted that the activities described in the broker's statement are services customarily performed by real estate brokers and, therefore, are not reimbursable.

With respect to reimbursement of broker's fees and real estate commissions, paragraph 2-6.2a of the FTR provides:

"A broker's fee or real estate commission paid by the employee for services in selling his residence is reimbursable but not in excess of rates generally charged for such services by the broker or by brokers in the locality of the old official station. No such fee or commission is reimbursable in connection with the purchase of a home at the new official station." (Emphasis added.)

The above provision precludes reimbursement of a purchaser's claim for the fee charged by a real estate agent except to the extent, if any, that the services performed are separable from brokerage services and are otherwise reimbursable.

The statement prepared by Mr. Smith's broker listing the services covered by the \$500 fee indicates that he accompanied Mr. Smith on several trips to the property, performed a market value analysis, prepared several purchase offers, negotiated contract terms with the seller, and participated in transactions closing the sale. Since these services are customarily performed by real estate brokers, there is no basis for reimbursing any portion of

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the charges Mr. Smith was required to pay his broker.
Compare Edwin M. Wood, B-184063, June 15, 1976.

With respect to Mr. Smith's claim for reimbursement of the loan transfer fee, paragraph 2-6.2d of the FTR delineates miscellaneous real estate expenses to which a transferred employee is entitled. This provision states that costs determined to be part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z, 12 C.F.R. §226.4(a), are nonreimbursable expenses. Regulation Z provides as follows:

"226.4 Determination of finance charge.

"(a) General rule. Except as otherwise provided in this section, the amount of the finance charge in connection with any transaction shall be determined as the sum of all charges, payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or payable by the customer, the seller, or any other person on behalf of the customer to the creditor or to a third party, including any of the following types of charges:

* * * * *

"(2) Service, transaction, activity, or carrying charge.

"(3) Loan fee, points, finder's fee, or similar charge.***"

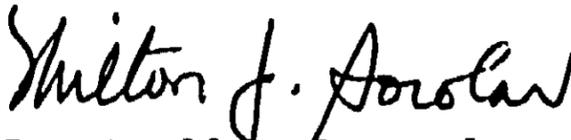
Our Office has long held that a loan transfer fee or loan assumption fee is not reimbursable because it is regarded as a finance charge under Regulation Z, despite the fact that such a fee merely reflects administrative costs. See Lawrence F. Roth, B-194203, May 7, 1979, and cases cited therein. Also, a loan transfer fee is not reimbursable because it is incident to the extension of credit from the lender to the purchaser. Bernard C. Zecha, B-187363, December 21, 1976. On this basis, Mr. Smith's claim for reimbursement of the loan transfer fee may not be allowed.

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Regarding the employee's claim for the cost of obtaining a "certificate of taxes due", paragraph 2-5.2c of the FTR provides for reimbursement of miscellaneous expenses incurred in connection with the purchase of a residence if such costs are customarily paid by the purchaser at the new official station. These expenses include, among other things, costs of preparing credit reports, mortgage and transfer taxes, State revenue stamps, and similar fees and charges.

HUD's schedule of standard closing costs for use in Colorado, forwarded to us by IRS, indicates that in Colorado it is customary for the seller to pay tax certification charges. Since there is no evidence indicating that the custom in Denver differs from the state-wide practice reflected in the HUD schedule, the certification charge paid by Mr. Smith is not reimbursable. Additionally, we have held under similar circumstances that the cost of obtaining a "certificate of taxes due" paid by the purchaser of a residence to a lending institution constitutes a nonreimbursable finance charge. See Wayne E. Holt, B-189295, August 16, 1977, and cases cited therein.

For the reasons stated, the voucher may not be certified for payment.

for 
Comptroller General
of the United States