

DECISION



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

FILE: B-215709

DATE: October 24, 1984

MATTER OF: John S. Derr - Relocation Expenses -  
Tax Service and Tax Certificate Fees

DIGEST:

Employee who purchased a residence incident to transfer may not be reimbursed for tax service and tax certificate fees paid to a title company, as such payments are service charges imposed incident to the extension of credit and thus are finance charges under the Truth in Lending Act and therefore not reimbursable under Federal Travel Regulations, para. 2-6.2d(2)(e).

The issue in this case is whether a transferred Federal employee of the United States Department of the Interior, Mr. John S. Derr, may be reimbursed a \$25 tax service fee and a \$5 tax certificate fee paid to a title company in conjunction with his purchase of a residence at his new duty station, Denver, Colorado. We find that Mr. Derr may not be reimbursed for the reasons that follow.

Mr. Derr's claim for reimbursement for tax service and tax certificate fees was denied by his agency on the basis that they were finance charges. The Federal Travel Regulations FPMR 101-7 (September 1981) prohibit reimbursement of "finance charges" associated with relocation, and provide in para. 2-6.2d(2) that:

"(2) Nonreimbursable items. Except as otherwise provided in (1), above, the following items of expense are not reimbursable:

\* \* \* \* \*

"(e) No fee, cost, charge, or expense determined to be part of the finance charge under the Truth in Lending Act, Title I, Pub. L. 90-321, and Regulation Z issued in accordance with Pub. L. 90-321 by the Board of Governors of the Federal Reserve System \* \* \*."

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The Truth in Lending Act, 15 U.S.C. § 1605 (1982), provides the following guidelines for determining whether a particular charge is an excludable expense or a part of the finance charge:

"(a) Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. The finance charge does not include charges of a type payable in a comparable cash transaction. Examples of charges which are included in the finance charge include any of the following types of charges which are applicable:

\* \* \* \* \*

"(2) Service or carrying charge."

Regulation Z (12 C.F.R. Part 226), promulgated by the Board of Governors of the Federal Reserve System pursuant to the Truth in Lending Act, 15 U.S.C. § 1601-5, sets forth the foregoing in substantially the same form. In addition, 15 U.S.C. § 1605(e), and 12 C.F.R. § 226.4(c), both list certain items that are exempted or excluded from the definition of finance charges.

In this case, Mr. Derr paid both tax service and tax certificate fees to a title company; he claims that because these fees were not paid to the lender, they can not properly be characterized as finance charges. However, 15 U.S.C. § 1605(a)(2), quoted above, includes service charges as a part of the finance charge. Thus, service charges are part of the finance charge when they are imposed incident to or as a condition of the extension of credit. See Jerrold J. Wahl, B-180981, October 1, 1974. Further, the tax service and tax certificate fees are not specifically exempted from the definition of finance charges by the provisions of 15 U.S.C. § 1605(e), and 12 C.F.R. § 226.4(c).

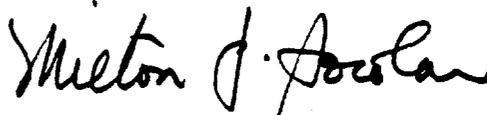
Therefore, it is the purpose of the fee that ultimately determines whether it is reimbursable. The law defines finance charges broadly. They are fees "imposed directly or indirectly by the creditor as an incident to the extension of credit." 15 U.S.C. § 1605(a) (emphasis added). Thus the question becomes not to whom the fees were paid but whether their expenditure was prerequisite to obtaining a mortgage. John G. Barry, B-199944, April 16, 1981; Wayne E. Holt, B-189295, August 16, 1977.

We note that Mr. Derr, in his letter dated January 4, 1984, states that both the tax service and tax certificate fees were "inevitable" concomitants of getting a home mortgage loan. Further, we were informally advised by the title company that handled Mr. Derr's loan that the tax service is provided annually for the term of the loan. Thus, it is clear that these service fees are not reimbursable since they were imposed directly as an incident to the extension of credit.

Mr. Derr also alleges that decisions of this Office are incompatible with the practice of the Internal Revenue Service (IRS), which declines to characterize either the tax service or tax certificate fee as a "finance charge." He asserts that "you can't have it both ways."

In response, we note that the authority to reimburse employees for relocation expenses is statutory in nature. The IRS practices have no bearing on these statutory provisions or their interpretation. See Robin J. Zeldin, B-211262, August 12, 1983; Donald W. Espeland, B-186583, March 30, 1978.

Accordingly, Mr. Derr's voucher may not be certified for payment.



Acting Comptroller General  
of the United States