

DECISION



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

30503

FILE: B-216203

DATE: February 22, 1985

MATTER OF:

Raymond P. Keenan - Real Estate Expenses

DIGEST:

1. A transferred employee sold his residence at his old duty station. Among the expenses claimed incident to the sale was a tax certification fee imposed by the local taxing authority to certify that all real estate taxes on the property had been paid. Paragraph 2-6.2c of the Federal Travel Regulations (FTR) authorizes reimbursement of the cost of title search and "similar expenses." Since the purpose of a title search is to determine whether title in the seller is in any way encumbered by recorded liens, and since a claim by a taxing authority for real property taxes not paid always runs against the property, a certification of taxes paid is an essential element in establishing clear title. Thus, the fee charged by a taxing authority qualifies as a reimbursable seller's cost as a "similar expense" under the cited FTR provision.
2. A transferred employee purchased a residence at his new duty station and was charged a loan assumption fee. Paragraph 2-6.2d(1) of the FTR, as amended, effective October 1, 1982, permits reimbursement of loan origination fees and similar fees and charges, but not items considered to be finance charges. The employee's loan assumption fee may be reimbursed where it is assessed in lieu of a loan origination fee, since it involves charges for services similar to those otherwise covered by a loan origination fee.

031291

3. A transferred employee sold his residence at his old duty station. Among the expenses claimed incident to that sale was the cost of an ERA warranty, which protects him as seller against the cost of replacement or repair of latent defects in the residence for a specified period after its sale. His claim is denied since FTR paragraph 2-6.2d(2) specifically excludes the cost of property loss and damage insurance and maintenance costs.

This decision is in response to a request from an Authorized Certifying Officer, Southeast Region, Internal Revenue Service (IRS), Department of the Treasury. It involves the entitlement of one of its employees to be reimbursed certain real estate transaction expenses incident to a permanent change-of-station transfer in January 1984. Reimbursement is authorized, in part, for the following reasons.

BACKGROUND

Mr. Raymond P. Keenan, an IRS employee, received a permanent change-of-station transfer from New York, New York, to Memphis, Tennessee, in January 1984. As an incident of his transfer he was authorized reimbursement for relocation expenses.

Following completion of his transfer to Memphis, Mr. Keenan submitted a claim totaling \$15,581.44, for travel and relocation expenses. The agency allowed \$13,953.99 and provided an itemized explanation as to why the remaining claimed real estate transaction expenses totaling \$1,627.45 were either suspended or disallowed.

On reclaim, Mr. Keenan asserted entitlement to all suspended and disallowed items and provided either an explanation, or evidence of expense incurred, for each. On administrative reconsideration, reimbursement of the following items pertaining to the sale of his house at his old station and purchase of a house at his new station remained in doubt:

1. Tax certification fee - \$30
2. Loan assumption fee - \$893.95
3. ERA warranty - \$330

DECISION

The provisions of law governing reimbursement of residence transaction expenses of transferred employees are contained in 5 U.S.C. § 5724a (1982), and implementing regulations. Those regulations are contained in Part 1 of Chapter 2, Federal Travel Regulations (FPMR 101-7, September 1981) (FTR), as amended, in part, by GSA Bulletin FPMR A-40, Supp. 4 (October 1982).

Tax certification fee

The authorized certifying officer has suggested that this item is for disallowance based on our ruling in decision George J. Wehrstedt, B-192851, May 11, 1979. We do not agree.

In Wehrstedt, we considered, in part, the propriety of reimbursing an employee for a tax service charge. The fee there was a charge made by the lender to the employee as the purchaser of a residence for a service performed by the lender to compute and prorate the tax obligation of the parties for the tax year in which settlement was made. We concluded that the charge made was an expense incident to the extension of credit, which in actuality, was a finance charge, and not reimbursable. See also John G. Barry, B-199944, April 16, 1981, and John S. Derr, B-215709, October 24, 1984.

According to Mr. Keenan, the tax certification fee was charged to him by the taxing authority for the Township of Northampton, Pennsylvania, to provide a certificate attesting that all real estate taxes due on the property he was selling were paid.

Paragraph 2-6.2c of the FTR provides, in part, for reimbursement of legal and related expenses incurred in connection with the sale of a residence if such costs are customarily paid by the seller of a residence at the old

official station, but not to exceed the amount customarily charged in that locality. These permitted expenses include, among others, the cost of searching title, preparing abstracts, preparing conveyances, other instruments and "similar expenses."

The purpose of a title search is to determine whether the seller has clear title to the property being sold and whether it is in any way encumbered. One such encumbrance would be a recorded real property tax lien. Thus, the failure to have a tax lien recorded, even as late as the date of settlement, would not defeat the lien since a property tax claim always runs against the property. Therefore, a certification by a taxing authority that all property tax payments are current is an essential element in the ability of the seller to pass clear title. Accordingly, while such expense is not specifically listed in FTR para. 2-6.2c, we believe that it does qualify as a reimbursable seller's cost as a "similar expense," and Mr. Keenan may be reimbursed the \$30 claimed.

We wish to note that this case is to be distinguished from those cases where we have denied reimbursement for a tax certification on the basis that it was a finance charge. Here, Mr. Keenan was the seller, not the purchaser, and the certification service was not performed incident to obtaining financing. Compare John S. Derr, above.

Loan Assumption fee

As an incident of his transfer, Mr. Keenan purchased a residence in the Memphis, Tennessee, area and assumed the mortgage loan of his seller. The authorized certifying officer disallowed reimbursement on the basis that it was not specifically authorized under FTR para. 2-6.2d, as revised and restated in GSA Bulletin FPMR A-40, Supp. 4 (October 1982).

The matter of reimbursement of a loan assumption fee incident to the purchase of a residence at an employee's new station, was the subject of decision Edward W. Aitkin, B-214101, May 7, 1984, 63 Comp. Gen. _____. We noted in that decision that FTR para. 2-6.2d(1)(f), as revised, allows reimbursement of "other fees and charges similar in nature" to those listed in para. 2-6.2d(1)(a-e), unless

specifically prohibited in para. 2-6.2d(2). Accordingly, we held that where a loan assumption fee involves costs similar to those covered by a loan origination fee, was not specifically prohibited by the FTR, and is assessed instead of a loan origination fee, it may be reimbursed under FTR para. 2-6.2d(1) as a miscellaneous expense. See also Lawrence R. Lyons, B-214255, July 30, 1984.

Therefore, Mr. Keenan may be reimbursed the loan assumption fee charged him, not to exceed the amount customarily paid in the locality of his new residence.

ERA Warranty

On reclaim, Mr. Keenan admits that the warranty obtained was insurance. He states, however, that because of heavy competition from new residence construction in the Northhampton area, the selling of a 17 year old, one-family dwelling was difficult. As a result, he found that in order for him to dispose of his residence in a reasonable time it was necessary for him to secure such a warranty.

The agency disallowance of this item was based on our decisions Phillip R. Rosen, B-187493, April 1, 1977, and Vincent A. Crovetti, B-189662, October 4, 1977.

In our Rosen and Crovetti decisions we considered the question whether the cost of an insurance contract which provided an employee, as the seller of a residence, with protection against the cost of replacing or repairing latent defects discovered within a specified period after its sale, may be reimbursed as a miscellaneous expense under FTR para. 2-6.2d. In the process of analyzing the matter, we established as a test whether the contract for such protection was required by law, custom or the lending institution as a condition of making the mortgage loan. We ruled that so long as the contract was not so required, its cost could not be reimbursed.

In our decision John D. Garrity, B-193578, August 20, 1979, which also involved a service maintenance contract, we rejected the test used in Rosen, above, to determine whether that expense could be reimbursed. We concluded in

B-216203

Garrity that since the contract was insurance, then regardless of whether it was required and by whom, its cost may not be reimbursed since insurance against loss and damage to property as well as maintenance costs are specifically excluded under para. 2-6.2d of the FTR. The holding in Garrity has been consistently followed. See Daniel J. Everman, B-210297, July 12, 1983.

As we understand the situation here, an ERA warranty is in the nature of insurance which was secured by Mr. Keenan through his real estate agent. Its purpose was to minimize or eliminate his potential liability to the buyer for latent defects in the home and the cost of maintenance or repair should such defects become apparent during a specified period following sale. Therefore, it is our view that the decisions in Garrity and Everman, above, are controlling here and the \$330 cost of the ERA warranty may not be certified for payment.

Milton J. Fowler

Acting Comptroller General
of the United States

General Electric