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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Jeffrey A. Ciocco

File: B-256699

Date: August 12, 1994

DIGEST

A transferred employee purchased a newly constructed residence from a new home builder and by agreement was required to pay full charges for state revenue stamps and transfer taxes at settlement. The agency disallowed 50 percent of those charges because it is customary for such charges to be evenly divided between buyers and sellers of existing housing. On appeal, the full amounts may be allowed. The customary local practice of new home builders is to require the purchaser of a newly constructed residence to pay the full expense of state revenue stamps and transfer taxes. Since the costs are authorized under 41 C.F.R. § 302-6.2(d)(1) (1993), they may be wholly reimbursed under that customary practice.

DECISION

This decision is in response to a request from the Chief Certifying Officer, Department of Energy (DOE),[1] concerning the entitlement of an employee to be reimbursed certain real estate related expenses. We conclude that the employee may be reimbursed, for the following reasons.

Mr. Jeffrey A. Ciocco, an employee of DOE stationed in Philadelphia, Pennsylvania, was transferred to the DOE facility in Germantown, Maryland, in June 1992. Incident to that transfer he contracted to purchase a new residence under construction from a builder with settlement to occur after the residence was completed and occupancy was approved. That settlement occurred on January 14, 1993, and Mr. Ciocco became the first owner of the residence.

Shortly thereafter, Mr. Ciocco made a voucher claim for the real estate related expenses incurred. Six expense items were disallowed or reduced by the agency. The two expense

[1] Mr. V. Joseph Startari

items which are the subject of this appeal are the reductions in the cost of state revenue stamps claimed from $1,435 to $717.50, and of transfer taxes claimed from $873.24, to $511.62. The agency disallowed the balance of these expenses because "the full payment of these fees is a contract requirement of the builder and not the custom for existing residences . . .."

The Federal Travel Regulation (FTR), in section 302-6.2(d)(1),[2] authorizes reimbursement to a transferred employee of certain miscellaneous real estate expenses if they are customarily paid by the purchaser of a residence at the new station, to the extent that they do not exceed amounts customarily charged in the locality of the residence. Among the expenses specifically listed in that provision as reimbursable are transfer taxes and state revenue stamps.

The agency's action here is based on the customary practice in the locality regarding state revenue stamps and transfer taxes on existing residences that the purchaser and the seller evenly divide the cost. However, the agency recognizes that it is the customary practice of new home builders in Frederick County, Maryland, to contractually require a purchaser of a newly constructed residence to incur the full expense of transfer taxes and state revenue stamps.

The concept of "customarily paid by the purchaser of a residence at the new station," embodies not only geographical custom, but also recognizes variations on types of transactions. For example, we have recognized that the local custom regarding allocation of closing costs between purchaser and seller can vary within the locality according to the type of mortgage financing the purchaser obtains.[3]

As the agency report suggests, each type of purchase arrangement can be subject to a differing custom in the same locality. We believe the proper approach is to consider only the customary practice for the particular type of transaction involved in each case.[4] According to the agency report in the instant case, the customary practice in the Frederick County, Maryland, area for new home builders is to require each purchaser to pay the full cost of state revenue stamps and transfer taxes. Since Mr. Ciocco

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[2]41 C.F.R. § 302-6.2(d)(1) (1993).

[3]*Edward M. Weglarz*, B-236362, Nov. 9, 1989.

[4]*William I. Massengale*, B-185863, Aug. 25, 1976.

purchased a newly constructed residence from a builder and by agreement paid the transfer tax and state revenue stamps, we need not consider the customary practice in the sale of existing residences between buyer and seller. Therefore, since these charges are assessed for every real estate transaction in the area, Mr. Ciocco may be reimbursed the full amount of both charges incurred, less the amounts already reimbursed.

/s/ Seymour Efros
for Robert P. Murphy
Acting General Counsel

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