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William Baubert
Civ.Pers.

DECISION

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

FILE: B-187890 DATE: February 17, 1977

MATTER OF: Michael R. Waldwyn - Real estate expenses - loan service fees

DIGEST: Transferred employee incurred finance charge in form of "closing fee" expressed as 1 percent of purchase price of new residence. Although such service charge may not be deductible as interest for income tax purposes, employee may not be reimbursed service charge since it is regarded as a non-reimbursable finance charge under Truth in Lending Act and Regulation Z.

By a letter dated October 8, 1976, Mr. Michael R. Waldwyn, an employee of the Federal Aviation Administration (FAA), has appealed the denial by our Claims Division of his claim for reimbursement of residence transaction expenses incurred incident to a permanent change of station.

The record indicates that pursuant to a travel order dated July 2, 1974, Mr. Waldwyn was transferred from Hawthorne, California, to San Jose, California. In connection therewith, he purchased a residence at his new duty station and incurred real estate expenses totaling $573.90, for which he claimed reimbursement from the FAA. On July 11, 1975, the FAA disallowed payment of $430 on the basis that such amount was an unreimbursable finance charge.

Mr. Waldwyn subsequently submitted to our Claims Division a claim in the amount of $430, representing the administratively disallowed charge. By Settlement Certificate No. Z-2631007, dated September 30, 1976, the Claims Division denied his claim on the grounds that under para. 2-6.2d of the Federal Travel Regulations (FPMR 101-7) (May 1973), no fee, cost, charge, or expense is reimbursable which is determined to be part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z issued pursuant thereto. Noting that decisions of this Office have held that a loan service charge or fee, not identified as being in payment of otherwise allowable expenses, is considered to be a finance charge, the Claims Division determined that in the absence of itemization and identification of allowable expenses, there was no basis to pay any of Mr. Waldwyn's claim.

In appealing the settlement, Mr. Waldwyn relies upon statements made in Chapter 24 of Internal Revenue Service (IRS) Publication 17 concerning interest deductions. In particular, he quotes a portion of that publication which states that for tax purposes a loan origination fee, or similar charge is not deductible as interest if it is compensation for specific services performed by the lender, including "the cost of preparing mortgage note or deed of trust, settlement fees, notary fees, etc." Further, Mr. Waldwyn refers to an example set forth in Publication 17 wherein a purchaser of a residence paid a 1 percent "loan origination fee" in connection with a home mortgage loan obtained from a lending institution and insured by the Veterans Administration. Citing this example as identical to his situation, Mr. Waldwyn quotes the conclusion reached in the example: "The amount of the one point loan origination fee in this situation is not interest." Equating the terms "interest" and "finance charge," it is Mr. Waldwyn's position that in light of the discussion set forth in IRS Publication 17, the $430 charge was erroneously classified by the Claims Division as a finance charge.

We note at the outset that Mr. Waldwyn's entitlement to reimbursement for real estate expenses is governed by 5 U.S.C. 5724a(4) (1970) and the Federal Travel Regulations, and not by the laws and regulations governing taxation. It is, therefore, not relevant whether the fees in question are deductible as interest charges for income tax purposes. B-176879, April 2, 1975.

Nevertheless, we find no inconsistency between the conclusion reached by our Claims Division and the IRS publication relied upon by the claimant. The charge for which Mr. Waldwyn seeks reimbursement was characterized by the lending institution in its Truth in Lending Act disclosure statement as a "prepaid finance charge" in the form of an "origination or closing fee." The amount of the fee was 1 percent of the $43,000 purchase price of the residence. In a statement dated June 3, 1975, the lender, Colonial Associates, Inc., stated that the purpose of the 1 percent charge is: "to reimburse the lender for expenses of processing and packaging the loan request and handling all details to satisfy the whims and requirements of FHA and the Veterans Administration." In B-178108, April 9, 1973, we considered whether a similar "closing fee" assessed on a percentage basis constituted a finance charge within the meaning of Regulation Z. After reviewing a list of purposes similar to those set forth in the statement by Mr. Waldwyn's

lender, we concluded that such a fee constituted a service charge for making the necessary arrangements to complete the loan. Similarly, in the present case, we conclude that the 1 percent closing fee of $430 constitutes a service charge.

While IRS Publication 17 designates such fees as charges for "specific services that the lender performs," service charges imposed in connection with the obtaining of credit are specifically listed as finance charges under the Truth in Lending Act, 15 U.S.C. 1605(a) (1970) and implementing provisions of Regulation Z found at 12 C.F.R. 226.4(a) (1976). Certain charges, such as fees for appraisals or for preparation of deeds are exempt from the provisions of Regulation Z, but there is no indication that all or any portion of the fee in question is in that category. Thus, the $430 charge in this case constitutes a service charge or loan fee which is part of the finance charge within the meaning of Regulation Z. B-178108, supra. Since paragraph 2-6.2d of the Federal Travel Regulations (May 1973), which governs reimbursement of real estate expenses, precludes reimbursement of any fee, cost, charge, or expense which is determined to be part of a finance charge under the Truth in Lending Act and Regulation Z, the $430 service charge incurred by Mr. Waldwyn may not be paid.

Accordingly, the settlement of our Claims Division is sustained.

Acting Comptroller General
of the United States