

DECISION



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

Mosher
PLM 1

FILE: B-199944

DATE: April 16, 1981

MATTER OF: John G. Barry - Relocation Expense, Tax Service Fee
[Request For Reimbursement of]

DIGEST: Employee who purchased residence incident to transfer was charged by the lender a tax service fee which was not listed as a finance charge on the Truth-in-Lending Statement. The fee for a tax search to be performed periodically throughout the term of the mortgage to check for tax delinquencies and liens is a finance charge and may not be reimbursed under paragraph 2-6.2d of the Federal Travel Regulations, even though otherwise characterized by the lender.

The issue presented in this case is whether a tax service fee is a finance charge and thus not reimbursable under the Federal Travel Regulations (FTR)(FPMR 101-7, May 1973) where the Truth-in-Lending Statement provided the buyer by the lending institution does not list the tax service fee as a finance charge. Although not so characterized by the lender, such fee is actually a finance charge and may not be reimbursed under paragraph 2-6.2d of the FTR.

This matter, although presented here by an authorized certifying officer of the Western Region of the Internal Revenue Service, is in effect an appeal from our Claims Division's settlement denying Mr. John G. Barry's claim for real estate expense reimbursement. Mr. Barry, an employee of the Phoenix District of the Internal Revenue Service, purchased a home incident to a permanent change of station. A tax service fee in the amount of \$16.50 paid to the Transamerica Real Estate Tax Service is shown as an item of expense to be paid by Mr. Barry and his wife on the settlement statement from the lender, Maricopa Federal Credit Union, Phoenix, Arizona. The Truth-in-Lending Statement given to the Barrys lists the tax service fee among those "charges not a part of finance costs." In view of the lender's characterization of the tax service fee, the certifying officer asks that we reconsider our Claims Division's determination that the fee is a finance charge which may not be reimbursed under the FTR. In urging favorable reconsideration of Mr. Barry's claim, the certifying officer points out that a tax service fee

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may or may not be a finance charge depending on the nature of the service provided, and for this reason he suggests that the lender's characterization of the particular fee should be accepted for the purpose of determining reimbursement.

Subparagraph 2-6.2d of the FTR reads in part as follows:

"* * * No fee, cost, charge, or expense is reimbursable which is determined to be a part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System. * * *"

Section 106 of the Truth in Lending Act, 15 U.S.C. 1605, 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, including any of the following types of charges which are applicable:

"(1) Interest, time price differential, and any amount payable under a point, discount, or other system of additional charges.

"(2) Service or carrying charge.

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

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"(4) Fee for an investigation or credit report.

"(5) Premium or other charges for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss.

* * * * *

"(e) The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

"(1) Fees or premium for title examination, title insurance, or similar purposes.

"(2) Fees for preparation of a deed, settlement statement, or other documents.

"(3) Escrows for future payments of taxes and insurance.

"(4) Fees for notarizing deeds and other documents.

"(5) Appraisal fees.

"(6) Credit reports."

Regulation Z (12 C.F.R., Part 226), was promulgated by the Board of Governors of the Federal Reserve System pursuant to the Truth in Lending Act, 15 U.S.C. 1601-5, and sets forth the foregoing in substantially the same form.

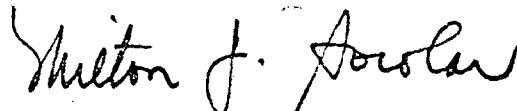
As may be seen from the material quoted above, "service charges" are to be included in finance charges. While certain charges connected with real property transactions, some of which might be denominated as a "service charge," are specifically excluded from finance charges

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(15 U.S.C. 1605(e); 12 C.F.R. 226.4(e)) service charges in general are not excluded.

In Mr. Barry's particular case, the fee paid to Transamerica Real Estate Tax Service is for a tax search to be performed periodically throughout the term of the mortgage. The service is designed to apprise the lender of any tax delinquency or lien filed against the property in which it holds a security interest. It is not specifically excluded from the finance charge by 15 U.S.C. 1605(e), but is akin to the tax service fee held to be a finance charge in Jerrold J. Wahl, B-180981, October 1, 1974. It is not reimbursable under paragraph 2-6.2d of the FTR regardless of the fact that the Truth-in-Lending Statement indicates that the tax service fee is excluded from finance costs. In determining whether or not a particular payment is a finance charge, the statement of the lending institution cannot simply be accepted. The reviewing official must examine the item in light of Regulation Z and our decisions. Kenneth DeFazio, B-191038, November 28, 1978.

For the reasons stated above, we affirm our Claims Division's denial of Mr. Barry's claim.



Acting Comptroller General
of the United States