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DECISION

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

FILE: B-203345 **DATE:** July 7, 1982

MATTER OF: Vernon L. Cox - Real Estate Expenses and Excess Valuation Charges

DIGEST:

1. A transferred employee reclaims expenses incurred in the sale of his residence at his old duty station which were previously disallowed by the agency. The disallowed expenses were a document fee which is customarily paid by the purchaser in the area and, therefore, not reimbursable under the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR), and a warehouse fee which is a finance charge under the Truth in Lending Act and Regulation Z. Reimbursement of any cost found to be a finance charge under Regulation Z, 12 C.F.R. § 226.4(a), is prohibited by FTR paragraph 2-6.2d.

2. Under the FTR, a Federal employee may declare a valuation above the carrier's minimum released valuation, but he must bear the additional costs of coverage. An employee may not be given an offset for a premium paid for the first $15,000 of insurance, which is the same amount of coverage provided an employee under 31 U.S.C. § 241, because the Government assumes its own risks and, therefore, pays no premiums for insurance.

Ms. V. G. Leist, an authorized certifying officer at the Internal Revenue Service, Department of the Treasury, requests an advance decision on a reclaim voucher of Mr. Vernon L. Cox for certain real estate expenses incurred in connection with the sale of a residence in Los Angeles, California, incident to a permanent change of duty station. Specifically, Mr. Cox requests reimbursement of a document fee in the amount of $100, and a warehouse fee in the amount of $250. We hold that Mr. Cox may not be reimbursed the items cited above because the document fee is customarily paid by the purchaser of a residence, not the seller, and the warehouse fee is a finance charge

that may not be reimbursed under paragraph 2-6.2d of the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR).

Additionally, Mr. Cox claims responsibility for only $50 on an insurance premium in the amount of $125 assessed on his household goods shipment. For the following reasons, we affirm the denial of this claim.

REAL ESTATE EXPENSES

Reimbursement of real estate expenses incurred by an employee of the Government upon the sale of a residence incurred because of a permanent change of duty station may be made under the provisions of Chapter 2, Part 6. of the Federal Travel Regulations. FTR paragraph 2-6.2d provides for the payment for the types of expenses claimed by Mr. Cox in connection with the sale of a residence, provided they are customarily paid by the seller of a residence at his old duty station to the extent the amounts claimed do not exceed the amounts customarily paid for such items in the locality of the residence.

Based on information furnished by the Los Angeles Regional Office of what was then the Federal Housing Administration in connection with our decision Roger D. Wenger, B-199888, March 25, 1981, indicating that the document fee expense is customarily paid by a purchaser, we hold that this expense is not reimbursable incident to Mr. Cox's sale of his former residence. Further, we were advised by the Department of Housing and Urban Development that the document fee is customarily paid by the purchaser in the Los Angeles area. See FTR paragraph 2-6.3c, and James C. Steckbeck, B-196263, February 13, 1980.

The nature of the warehouse fee was explained in a letter from the Certified Escrow Corporation, the agent for the lender. The letter stated:

"In the subject transaction, the Buyer obtained a new FHA loan to purchase the property. There are certain loan charges which the lender does not allow the Buyer to pay in an FHA loan. We have been asked to explain the following charges to the Seller which are such costs not allowed to be charged to the Buyer.

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'Warehouse Fee - $250.00 - This is the charge made for the deposit of loans in a bank or depository for sale at a later date. This is done when the mortgage company wishes to assemble a block of loans for sale."

Paragraph 2-6.2d of the FTR prohibits the reimbursement of any item which is found to be a finance charge under the Truth in Lending Act, and Regulation Z issued by the Board of Governors of the Federal Reserve System. In determining whether or not an item is part of a finance charge, the reviewing officials must examine it in light of Regulation Z, in particular 12 C.F.R. § 226.4 (1981), and our decisions. The items comprising a finance charge are listed in 12 C.F.R. § 226.4(a) and the items that may be excluded in real estate transactions are listed in 12 C.F.R. section 226.4(e). The term "warehouse fee" is not used in Regulation Z. However, the general definition in 12 C.F.R. § 226.4(a) states that a finance charge includes:

> "* * * the sum of all charges, payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit * * *."

The lender's agent states that the warehouse fee was the charge made for the deposit of loans in a bank for sale at a later date. In the circumstances, it is clear that the warehouse fee was a charge that was incident to the extension of credit and must be considered to be part of the finance charge, the reimbursement of which is prohibited by FTR paragraph 2-6.2d.

EXCESS VALUATION CHARGE

Mr. Cox was authorized to ship his household goods at Government expense. In arranging for the shipment of his household goods under a Government Bill of Lading, Mr. Cox elected to insure them at a valuation of $25,000 at a cost of $125. There exists no statute or regulation which authorizes payment by the Government for costs resulting from an employee's declaring a valuation of his goods in excess of the minimum valuation amount included in the carrier's rate.

A transferred employee's entitlement to shipment of his household goods is governed by the provisions of 5 U.S.C. § 5724 (1976) and the implementing regulations contained in Chapter 2, Part 8, of the FTR. Thus, Mr. Cox's entitlement is governed by the limitations in the FTR. Under FTR paragraph 2-8.4e(3), an employee may declare a valuation above the carrier's minimum, but he must bear the additional insurance costs for the higher valuation. See Bruce R. Bowman and Kenneth I. Daugherty, B-183053, March 12, 1975.

The FTR provision requiring that the employee pay the additional costs for the higher valuation has the force and effect of law and may not be waived or modified by any department or agency of the Government in an individual case. The declaration of excess valuation and the resulting charge is a voluntary act on the part of the employee and not required nor authorized to be paid by the Government. See Jimmy Leonard, B-197670, April 16, 1981.

Mr. Cox contends, however, that the premium applicable to the first $15,000 of insurance should be paid by the Government because this is the amount of insurance the Government is required to provide pursuant to 31 U.S.C. § 241(a)(1) (1976) (part of the "Military Personnel and Civilian Employees' Claims Act of 1964").

In response to this contention we note that the Federal Government's long standing policy has been to self-insure its own risks of loss. Thus, we have stated that:

> "It is a settled policy of the United States to assume its own risks and the established rule is that, unless expressly provided by statute, funds for the support of Government activities are not considered applicable generally for the purchase of insurance to cover loss of or damage to Government property. * * * It is not sufficient that there is no law specifically providing that the United States shall not insure its property against loss, but rather that there is some law which specifically authorizes it. * * * The basic principle of fire, tornado, or other similar insurance is the lessening of the burden of individual losses by wider distribution thereof, and it is difficult to conceive of a person, corporation, or legal entity better prepared to carry insurance or sustain a loss than the United States Government. As to this policy of the Government to assume its own risks no material distinction is apparent between assumption of risk of property damage and assumption of risk of tort liability." 19 Comp. Gen. 798, 800 (1940).

The Government's practice of self-insurance is derived from policy considerations, not positive law. This policy arose because it was felt that the magnitude of the Government's resources and the wide dispersion of the types and geographical location of the risks made a self-insurance policy generally more advantageous to the Government in that it would save the items of cost and profit which private insurers have to include in their premiums. See B-175086, May 16, 1972.

Therefore, because of the general policy of having the Government assume its own risks, that is, act as self-insurer, it does not purchase insurance contracts or pay insurance premiums. The insurance purchased by Mr. Cox was of no benefit to the Government, nor did it save the Government any premium expense otherwise payable. Therefore, no basis exists to reimburse Mr. Cox for the insurance costs for his excess valuation.

Accordingly, the denial of the claim is sustained.

Milton J. Socolar

Acting Comptroller General
of the United States