

DECISION

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

FILE: B-210351**DATE:** May 10, 1983**MATTER OF:** Christopher S. Werner - Reimbursement for
Real Estate Expenses**DIGEST:**

Transferred employee may not be reimbursed for a State Grantor's Tax paid by him on behalf of a seller in connection with the purchase of a new residence. Although it may be common for a buyer to pay the Grantor's Tax, the local HUD office has determined that it is customary for the seller to pay such cost in that particular area.

By submission dated December 13, 1982, Lieutenant Colonel William F. Mallett, Chief, Pay and Travel Systems Branch, Directorate of Plans and Systems, Department of the Air Force, requests an advance decision concerning the claim of Mr. Christopher S. Werner. Mr. Werner claims reimbursement of the Virginia State Grantor's Tax paid by him in connection with the purchase of his new residence incident to a permanent change of station. The submission was forwarded through the Per Diem, Travel and Transportation Allowance Committee, and has been assigned PDTATAC Control No. 82-29.

The issue is whether a purchaser may be reimbursed for real estate expenses paid on behalf of the seller when it is common for the purchaser to pay such costs but the practice is not an established custom. The claim is denied since a Grantor's Tax is customarily paid by the seller.

The voucher submitted on behalf of Mr. Werner for \$102.50 represents the Virginia State Grantor's Tax which is, according to Code of Virginia § 58-54.1, to be paid by the seller of realty. However, the contract of sale provided that this cost would be borne by the purchaser. The Chief of Accounting Operations, Department of the Air Force, stated that the above expense is usually paid by the seller and therefore not subject to reimbursement on the basis of a renegotiation of payment of the tax between the seller and the buyer.

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The authority governing the payment by the Government of expenses incident to the sale and purchase of residences is contained in section 5724a of Title 5, United States Code (Supp. IV 1980), and the implementing regulations in Chapter 2, Part 6, of the Federal Travel Regulations FPMR 101-7 (May 1973) (FTR). These regulations state a general requirement that the expense for which reimbursement is claimed is one which is customarily borne in the transaction locality by the seller in the case of a sale, or by the buyer if incident to the purchase of a residence. FTR para. 2-6.2d, and 2-6.2f.

With respect to the claim in question, the inclusion of the statement in the contract of sale that "all other charges * * * including grantor's tax, shall be paid for by Purchaser" indicates that the costs are customarily those of the seller which the buyer in this instance agreed to assume. The fact that the practice of a buyer assuming a charge normally borne by the seller pursuant to contract is quite common, does not raise it to the status of a local custom. See James C. Steckbeck, B-196263, February 13, 1980.

The method to be used in determining what the local custom is in respect to closing costs in a particular area is set out in FTR para. 2-6.3c which provides in pertinent part as follows:

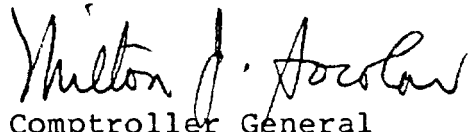
"Assistance provided by local offices of the Department of Housing and Urban Development. * * * The local office will also furnish upon request information concerning local custom and practices with respect to charging of closing costs related to either a sale or purchase, including information as to whether such costs are customarily paid by the seller or purchaser * * *"

We contacted the local Housing and Urban Development (HUD) office as required by paragraph 2-6.3c of the FTR. We were informally advised that the burden of payment of

the grantor's tax as well as other closing expenses may be shifted between seller and purchaser in the northern Virginia area pursuant to a bona fide contract of sale. Moreover, we were informed that it is customary in real estate transactions in that area for the seller of the residence to bear the expense of payment of the Grantor's Tax.

Mr. Werner contends that he has surveyed several local real estate agents and settlement attorneys who advised him that payment of the Grantor's Tax is a negotiable item and is frequently paid by the buyer, especially in new home purchases. Yet, in the absence of evidence more substantial than Mr. Werner's informal survey, we must hold that the information provided by HUD is controlling and that Mr. Werner may not be reimbursed for the payment of the tax in question. See Burton Newmark, B-190715, March 24, 1978.

Accordingly, for the foregoing reasons, Mr. Werner's voucher may not be certified for payment.

for 
Comptroller General
of the United States