

DECISION



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

20973

FILE: B-211262

DATE: August 12, 1983

MATTER OF: Robin J. Zeldin

DIGEST:

Transferred employee claims reimbursement of loan discount fee and VA buy down charge paid in connection with the sale of his old residence. Regardless of their treatment for tax purposes or their characterization under the Truth in Lending Act, payment is precluded by the prohibition in FTR para. 2-6.2d against reimbursement of points and mortgage discounts.

By letter of March 18, 1983, an authorized certifying officer with the Internal Revenue Service requested an advance decision on the reclaim voucher of Mr. Robin J. Zeldin for reimbursement of real estate sale expenses disallowed by the agency on the basis that they are part of the finance charge. Regardless of their characterization for purposes of the truth in lending laws or for tax purposes, the expenses may not be reimbursed in view of the specific regulatory prohibition against reimbursement of points and mortgage discount charges.

Mr. Zeldin, an employee of the Internal Revenue Service, was transferred from Elkhart to Lafayette, Indiana, effective November 16, 1981. He sold the residence at his old duty station on December 27, 1982. In reimbursing Mr. Zeldin for real estate sale expenses his agency disallowed Mr. Zeldin's claim for a 6 percent loan discount fee in the amount of \$2,520 and a Veterans Administration buy down charge of \$2,297.76. Reimbursement was denied on the basis that these expenses were part of the finance charge. Mr. Zeldin has reclaimed these amounts stating that they are not finance charges since they cannot be deducted from income tax as interest. Mr. Zeldin has cited various Internal Revenue Service Revenue Rulings to support his contention that the disallowed expenses are not deductible as interest by the seller.

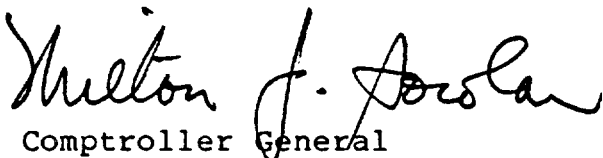
A Federal employee's entitlement to be reimbursed for the expenses incurred in connection with the purchase of a residence at a new duty station or the sale of a residence

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at the old duty station is governed by 5 U.S.C. § 5724a(a)(4) (1976) and the implementing regulations contained at Part 2, Chapter 6 of the Federal Travel Regulations (FTR) (FPMR 101-7). Paragraph 2-6.2d of the FTR specifically provides that "interest on loans, points and mortgage discounts are not reimbursable." In addition that paragraph precludes reimbursement of any expense incurred in connection with the sale or purchase of a house that is determined to be part of the finance charge as defined in the Truth in Lending Act and Regulation Z issued thereunder by the Board of Governors of the Federal Reserve System, 12 C.F.R. Part 226. It is these provisions rather than the characterizations of the Internal Revenue Service, the Department of Housing and Urban Development, the Veterans Administration, or the lending institution which are determinative in deciding what fees may be reimbursed. Matter of Espeland, B-186583, March 30, 1978.

In this case, payment of Mr. Zeldin's claim for the 6 percent loan discount fee is precluded by the specific prohibition at FTR para. 2-6.2d against reimbursement of "mortgage discounts." The Veterans Administration buy down fee paid as consideration for the lender's extension of credit to the purchaser at a reduced rate of interest for a specified period is essentially a discount fee and its reimbursement is likewise precluded without regard to whether it is or is not included as a finance charge under Regulation Z. In that connection we note that effective October 1, 1982, 12 C.F.R. 226.4(c) was amended to exclude "seller's points" from the definition of a finance charge.

Accordingly, Mr. Zeldin's voucher may not be certified for payment.

for 
Comptroller General
of the United States