

DECISION

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**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-215552**DATE:** December 11, 1984**MATTER OF:** Dennis D. Gabel - Real Estate Transaction Expenses**DIGEST:**

1. A transferred employee purchased a residence at his new duty station and assumed the seller's mortgage. He purchased an owner's title insurance policy and split its cost with the seller. The employee seeks reimbursement of his share of the costs on the basis that such cost splitting is the custom of the area. Under FTR, para. 2-6.2d(1)(i), reimbursement for cost of such policy may be allowed, but only if it is a prerequisite to financing or property transfer, or the costs are inseparable from other insurance costs. Since neither condition exists in this case, reimbursement may not be allowed.

2. A transferred employee purchased a residence at his new station and assumed the seller's mortgage. The cost of title search and examination were split equally between the employee and the seller. The employee seeks reimbursement of his share of that cost on the basis of local custom. Under FTR, para. 2-6.2c(1), the cost of title search and examination is reimbursable, if it is customarily paid by the employee and if it does not exceed amount customarily charged in the area. These conditions are met in the present case.

This decision is in response to a request from Janis P. Russo, an Authorized Certifying Officer, Southwest Region, Internal Revenue Service, Department of the Treasury (IRS). It concerns the entitlement of an IRS employee to be reimbursed for certain real estate expenses incurred incident to a permanent change of station in August 1983. For the reasons stated below, the employee may be reimbursed in part.

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BACKGROUND

The employee, Mr. Dennis D. Gabel, was transferred from Garden City, Kansas, to Wichita, Kansas, and reported for duty on August 21, 1983. Incident to that transfer, he purchased a residence in the Wichita area. His claim for relocation expenses included \$332.62 for costs associated with the purchase of that residence. Of that amount, \$207.50, representing the cost of owner's title insurance, was disallowed by the IRS for the reason that owner's title insurance is not reimbursable on the purchase of a residence. The disallowance was based on Internal Revenue Manual (IRM) 1763, Travel Handbook, section 593, October 16, 1981, which states that the cost of an owner's title policy is not reimbursable.

Following reclaim by Mr. Gabel, the Lawyer's Title Insurance Corporation informed the IRS that the local practice is to show the total cost of title insurance without itemization. The total cost of \$415 represented a premium for the owner's title insurance of \$226, and a charge for title search and examination of \$189. The total cost was split equally between Mr. Gabel, as purchaser, and the seller. The IRS was also informed that since Mr. Gabel assumed an existing loan there was no requirement that title insurance be obtained, but it was noted that, in Wichita, title insurance is used to show marketable title in lieu of an abstract. The IRS then contacted the Housing and Urban Development office in the area and was advised that for a loan assumption the splitting of the costs of title insurance is a customary practice in the area.

DECISION

The provisions governing reimbursement of residence transaction expenses of transferred employees are contained in 5 U.S.C. § 5724a (1982) and implementing regulations. Those regulations are contained in Part 6 of Chapter 2, Federal Travel Regulations (FPMR 101-7, September 1981) (FTR), as amended, in part, by GSA Bulletin FPMR A-40, Supp. 4 (October 1982). Paragraph 2-6.2c of those regulations provides:

c. Legal and related expenses. To the extent such costs have not been included in brokers' or similar services for which reimbursement is claimed under other categories, the following expenses are reimbursable * * * if they are customarily paid by the seller of a residence at the old official station or if customarily paid by the purchaser of a residence at the new official station, to the extent they do not exceed amounts customarily charged in the locality of the residence: costs of (1) searching title, preparing abstract, and legal fees for a title opinion or (2) where customarily furnished by the seller, the cost of a title insurance policy * * *. (Emphasis added.)

Additionally, FTR, para. 2-6.2d (Supp. 4, October 1982), which revised and restated the miscellaneous expense provision, provides in part:

d. Miscellaneous expenses.

(1) Reimbursable items. The expenses listed below are reimbursable in connection with the sale and/or purchase of a residence, provided they are customarily paid by the seller of a residence in the locality of the old official station or by the purchaser of a residence at the new official station to the extent they do not exceed amounts customarily paid in the locality of the residence.

* * * * *

(i) Owner's title insurance policy, provided it is a prerequisite to financing or the transfer of property; or the cost of the owner's title policy is inseparable from the cost of other insurance, which is a prerequisite to financing or the transfer of property; * * *.

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(2) Nonreimbursable items. Except as otherwise provided in (1), above, the following items of expense are not reimbursable:

(a) Owner's title policy, "record title" insurance policy, mortgage insurance or insurance against loss or damage of property, and optional insurance paid for by the employee in connection with the purchase of a residence for the protection of the employee * * *.

As we understand the facts, Mr. Gabel obtained an owner's title insurance policy for the protection of his own interest. Since the securing of an owner's title policy was not a prerequisite to his assumption of the seller's mortgage loan, that portion of his claim which represents his share of the owner's title policy premium (\$113) may not be reimbursed. FTR, para. 2-6.2d(1)(i).

With regard to the cost of title search and examination, FTR, para. 2-6.2c(1) specifically authorizes reimbursement of the cost of title search to an employee, either as seller or purchaser, but not to exceed the amount customarily charged in the locality of the residence. The expense of title search and examination to insure a marketable title usually is a seller's expense. However, we have approved reimbursement for expenses incurred for title examination and certification of clear title to the extent that such expenses are customarily paid by the purchaser of a residence at the new duty station and do not exceed the amounts customarily charged in the locality of that residence, even where the purchaser assumes a loan previously made. B-171323, February 5, 1971.

The submission reflects that cost splitting of such an expense between buyer and seller is a customary practice in the Wichita area, and there is nothing to show that the

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expense of the title search and examination was excessive. Accordingly Mr. Gabel may be reimbursed his portion of the cost of title search and examination.

for *Melton J. Aoulan*
Comptroller General
of the United States