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

FILE: B-217474 **DATE:** July 19, 1985

MATTER OF: Anibal L. Toboas

DIGEST:

1. A transferred employee who obtained personal interim financing loans in order to purchase a new residence pending receipt of permanent financing by executing a mortgage against the newly purchased residence may be reimbursed expenses in connection with that mortgage transaction as if the mortgage had been executed simultaneously with the earlier transfer of title in the residence to the employee. However, where charges for state revenue stamps at the time of the purchase of the residence are reimbursed, no additional reimbursement may be made for state revenue stamps in connection with the execution of a subsequent mortgage.

2. Under the Federal Travel Regulations in effect when an employee reported at his new duty station in March 1982, a messenger service fee he paid a lending institution in connection with mortgage financing of his new home may not be reimbursed to him. Such a fee was an overhead expense of the lender which when passed to the borrower is considered a finance charge which is nonreimbursable.

A transferred employee may not be reimbursed charges for state revenue stamps incurred in refinancing his residence at his new duty station when he had been reimbursed charges for state revenue stamps at the time of the purchase of the residence. Also, a messenger fee paid the mortgage lender in connection with the disbursement of funds may not be reimbursed as it is part of the lender's overhead, a charge for which is considered part of the finance charge. 1/

1/ Mr. V. Joseph Startari, an authorized certifying officer with the Department of Energy, has requested our decision on the reclaim of Mr. Anibal L. Toboas for certain expenses in connection with the purchase of his residence.

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BACKGROUND

Mr. Anibal L. Toboas, an employee of the Department of Energy, was authorized a permanent change of station from Albuquerque, New Mexico, to Germantown, Maryland, by travel authorization dated February 17, 1982. He reported for duty at his new station on March 7, 1982. In connection with the transfer, Mr. Toboas purchased a residence on March 27, 1982, in Germantown, Maryland, in a cash transaction financed by personal loans and was reimbursed allowable expenses in the amount of $2,039.20. This reimbursement included the amount of $409.20 for state revenue stamps on the purchase. A second claim regarding this transaction submitted in December 1982 was reimbursed in the amount of $110 in payment for an appraisal fee of $85 and a credit report fee of $25.

On May 18, 1983, Mr. Toboas obtained permanent financing for his purchase of the new residence and executed a deed of trust (mortgage) against that property in the amount of $76,050. Presumably, the proceeds from the mortgage were used to satisfy his obligation with respect to the personal loans he had obtained earlier. In June 1983, he submitted a third claim for the settlement of the subsequent mortgage transaction in the amount of $2,276.30 which included additional expenses for state revenue stamps in the amount of $336.60 and a messenger fee in connection with the disbursement of funds in the amount of $20. The $336.60 for state revenue stamps was disallowed because if the financing had been accomplished with the first settlement, the revenue stamps would have been levied once for the purchase price. The certifying officer based his denial of payment on James T. Rideoutte, B-188716, July 6, 1977. The messenger fee was disallowed because it was not considered a customary charge. 2/

Mr. Toboas has reclaimed payment of the $336.60 for state revenue stamps and the $20 messenger fee in connection with the mortgage transaction.

2/ The submission also indicates that through error Mr. Toboas was reimbursed twice for the $85 appraisal fee and $25 credit report fee by payment on the second and third claim and that the overpayment will be held for collection pending our decision on the allowability of his claim.

ANALYSIS

Under the provisions of 5 U.S.C. § 5724a(a)(4) (1982) and the implementing regulations, the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR), an employee may be reimbursed for certain real estate expenses incurred when he transfers to a new duty station. State revenue stamps are reimbursable with respect to purchase of residences if they are customarily paid 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 Para. 2-6.2d, FTR. William N. Baggett, B-187123, February 9, 1977.

An employee obtained a personal interim financing loan in order to purchase a new residence pending receipt of the proceeds from the sale of his former residence. Three months later after receiving these proceeds, he obtained permanent financing by executing a first mortgage against the newly purchased residence. We have held that the employee could be reimbursed expenses in connection with the mortgage transaction as if the mortgage had been executed simultaneously with the earlier transfer of title in the residence to the employee. James T. Rideoutte, B-188716, July 6, 1977.

If Mr. Toboas had completed the financing of his new residence at the time of the purchase, the state revenue stamps would have been levied once for the purchase price and would not have exceeded the amounts customarily paid in the locality of the residence. However, when he refinanced his loans by the execution of a subsequent mortgage, he was required to pay for additional state revenue stamps on this transaction. He has been reimbursed previously $409.20 for state revenue stamps on the purchase of his new residence. The payment of an additional amount would exceed the amount customarily paid in the locality for state revenue stamps on the purchase of a residence. Therefore, the $336.60 paid for revenue stamps on the subsequent mortgage may not be reimbursed. Para. 2-6.2d, FTR.

At the time Mr. Toboas reported for duty at Germantown, the governing date under the regulations, reimbursement was prohibited for any item of real estate expense which was determined to constitute a finance charge under the Truth in

Lending Act,[3] as implemented by the Federal Reserve Board's Regulation Z, 12 C.F.R § 226.4(a). Para. 2-6.2d, FTR. The relevant part of Regulation Z expressly categorizes service charges and loan fees as part of the finance charge when they are imposed directly or indirectly on the consumer incident to or as a condition of the extension of credit. The finance charge, therefore, is not limited to interest expenses but includes charges which are imposed to defray a lender's administrative costs. Charles E. Berg, B-198475, October 17, 1980. A messenger service charge paid to the mortgage lender may not be reimbursed because it is part of the lender's overhead, a charge for which is considered part of the finance charge under Regulation Z. Patrick T. Schulk, B-202243, July 6, 1983.

Accordingly, payment of the claim of Mr. Toboas may not be made.

Milton J. Socolar

for Comptroller General
of the United States

[3] Title I, Public Law 90-321, as amended, 15 U.S.C. §§ 1601-1667.