

Gatz-zunderger



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Kenneth R. Pedde - Relocation Expenses - Tax  
Service and Underwriter's Fees  
File: B-223797  
Date: April 20, 1987

## DIGEST

An employee who purchased a residence incident to transfer may not be reimbursed for underwriter's fee and tax service fee as such payments are considered finance charges under the Truth in Lending Act and Regulation Z and are not reimbursable under Federal Travel Regulations, para. 2-6.2d(2)(e).

## DECISION

### ISSUE

A transferred Federal employee claims reimbursement for an underwriter's fee and a tax service fee charged by the lender in connection with the purchase of a residence at his new duty station.<sup>1/</sup> The underwriter's fee and the tax service fee are considered finance charges which may not be reimbursed.

### BACKGROUND

Mr. Kenneth R. Pedde, an employee of the Bureau of Reclamation, Department of the Interior, was transferred from Billings, Montana, to Amarillo, Texas, on June 10, 1985. Incident to his transfer, he was authorized reimbursement of certain expenses in connection with the purchase of a residence at his new duty station. He claimed real estate purchase expenses including an underwriter's fee of \$75 and a tax service fee of \$60. Mr. Pedde's mortgage lender advised him that the underwriter's fee is a fee charged by the underwriter to review the loan documents for approval or

<sup>1/</sup> Larry D. West, Acting Regional Finance Officer, Bureau of Reclamation, United States Department of the Interior, submitted this request for a decision.

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disapproval and that the fee is a necessary expense in obtaining a loan. The mortgage lender also advised Mr. Pedde that the tax service fee is a fee paid to a separate company to ensure that the taxes on the property have been paid and that such payments as may be necessary are made before closing. Mr. Pedde claims reimbursement by arguing these fees are analogous to abstract and attorney fees charged for research and review before settlement.

The agency disallowed the \$75 and \$60 charges on the premise that they appeared to be finance charges. The submission cites as the basis of their disallowance paragraph 2-6.2d(2)(e) of the Federal Travel Regulations and our decision George J. Wehrstedt, B-192851, May 11, 1979, in which we held that the underwriter's fee and the tax service charge are charges incident to the extension of credit considered as part of the finance charge and not reimbursable.

#### OPINION

Reimbursement of relocation expenses is governed by the Federal Travel Regulations (Supp. 4, Aug. 23, 1982), incorp. by ref., 41 C.F.R. § 101-7.003 (1985). Paragraph 2-6.2d(2)(e) of those regulations prohibits reimbursement of any item which is determined to be a finance charge under the Truth in Lending Act, 15 U.S.C. § 1605, and Regulation Z, 12 C.F.R. § 226.4 (1985) issued by the Board of Governors of the Federal Reserve System in implementation of the Act. In determining whether or not an item is part of a finance charge, the reviewing official must examine it in light of the Act, its implementing Regulation Z, and our decisions.

The Truth in Lending Act, 15 U.S.C. § 1605, provides the following guidelines for determining whether a particular charge is an excludable expense or a part of the finance charge:

"(a) Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. The finance charge does not include charges of

a type payable in a comparable cash transaction. Examples of charges which are included in the finance charge include any of the following types of charges which are applicable:

\* \* \* \* \*

"(2) Service or carrying charge."

Regulation Z (12 C.F.R. Part 226), sets forth the foregoing in substantially the same form. In addition, 15 U.S.C. § 1605(e) and 12 C.F.R. § 226.4(c) both list certain items that are exempted or excluded from the definition of finance charges. Underwriter's fees and tax service fees are not specifically exempted from the definition of finance charges by the provisions of 15 U.S.C. § 1605(e) and 12 C.F.R. § 226.4(c).

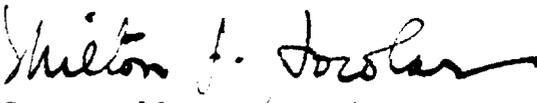
If the fee is not specifically mentioned in the Act or Regulation Z, it is the purpose of the fee that ultimately determines whether it is reimbursable. The law defines finance charges broadly; they are fees "imposed directly or indirectly by the creditor as an incident to the extension of credit." 15 U.S.C. § 1605(a) (emphasis added). Thus, the question is whether the fee under consideration was prerequisite to obtaining a mortgage. John S. Derr, B-215709, October 24, 1984.

We have consistently held that an underwriter's fee and a tax service fee are incident to the extension of credit and as such must be considered part of the finance charge and not reimbursable. Derr, cited above; John G. Barry, B-199944, April 16, 1981; and Wehrstedt, cited above. The submission indicates that for both the underwriter's fee and the tax service fee, the mortgage lender advised Mr. Pedde that these charges were necessary to secure the loan.

The submission also indicates that Mr. Pedde believes the underwriter's fee and the tax service fee should be treated the same as abstract and attorney fees which he contends are also paid to research and determine the status of the taxes and advise on the overall loan package. In response, we reiterate that in determining whether a particular kind of fee is reimbursable, it is examined in light of whether that fee is specifically excluded by the Act or Regulation Z, whether it is incident to the loan, and how it has been

treated in our decisions, not how it can be compared to other types of fees. We note that abstract fees are specifically excluded from finance charges in Regulation Z, 12 C.F.R. § 226.4(c)(7)(i), while attorney fees are not per se reimbursable but must be itemized to show what services they covered. Only those portions of the attorney fees which are for the purposes specifically excluded from the finance charge by Regulation Z and are reasonable in amount can be certified for payment. See, Robert E. Whitney, 58 Comp. Gen. 786 (1979).

Accordingly, Mr. Pedde is not entitled to reimbursement for the \$75 underwriter's fee and the \$60 tax service fee.

*for*   
Comptroller General  
of the United States