

**DECISION**

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McLain

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

FILE: B-202103

DATE: July 16, 1981

MATTER OF: James W. Pierce - Temporary Quarters and Real Estate Expenses  
[Claim for]

- DIGEST:
1. Employee who, incident to transfer, rented house in Juneau, Alaska, which he agreed to buy, is not entitled to temporary quarters subsistence expenses before settlement. Even though sellers had not executed earnest money agreement during period covered by claim, the employee's intent at the time he moved into quarters was clearly to make house his permanent residence.
  2. Employee who purchased a residence incident to transfer may not be reimbursed for loan origination fee, tax registration fee, and loan extension fees, since such payments are finance charges under Regulation Z and are not reimbursable under Federal Travel Regulations, para. 2-6.2d (May 1973).

Ms. Anita R. Smith, an authorized certifying officer of the Department of Agriculture, requests a decision as to the propriety of certifying for payment the claim of Mr. James W. Pierce for temporary quarters subsistence expenses and certain items and amounts representing real estate expenses in connection with the purchase of a residence in September 1980, in Juneau, Alaska, upon transfer of station.

The amounts questioned are temporary quarters subsistence expenses of \$2,352 and additional real estate expenses, consisting of an \$825 loan origination fee, a \$30 tax registration fee, and \$309.36 in loan extension fees. The certifying officer believes that Mr. Pierce is not entitled to temporary quarters subsistence expenses in connection with his rental occupancy of the house he subsequently purchased as his permanent residence and that the real estate expenses are nonreimbursable finance charges. We agree with that determination.

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Mr. Pierce reported for duty in Juneau on November 18, 1979, at which time he and his family occupied temporary quarters. On November 21, 1979, he executed an earnest money agreement for the purchase of a residence in Juneau. He and his family moved into the residence on November 24, 1979, under a rental agreement extending until execution of the final settlement. Due to numerous difficulties, this final closing was not completed until September 12, 1980. Mr. Pierce contends that since the earnest money agreement was not signed by the sellers until February 1980, he was entitled to temporary quarters subsistence expenses during the period November 24, 1979, through December 17, 1979.

In connection with the purchase of his residence, Mr. Pierce states that the seller's delay in executing the sales documents resulted in the First National Bank of Anchorage, Juneau Branch, having to apply for two extensions of the house closing through the lender, Alaska Housing Finance, for which he paid \$309.36 at the time of the settlement. He further seeks reimbursement of the loan origination fee in the amount of \$825 which was paid to the bank and a tax registration fee of \$30.

Section 5724a(a)(3), title 5, United States Code (1976), is the statutory provision providing for reimbursement of temporary quarters allowance. Paragraph 2-5.2c of the Federal Travel Regulations (FTR) (FPMR 101-7), implementing the statute, defines temporary quarters as follows:

"What constitutes temporary quarters. The term 'temporary quarters' refers to any lodging obtained from private or commercial sources to be occupied temporarily by the employee or members of his immediate family who have vacated the residence quarters in which they were residing at the time the transfer was authorized."

In William C. Trest, B-183641, October 9, 1975, we considered a similar claim for temporary quarters subsistence expenses submitted by an employee for the period he occupied the residence which he subsequently purchased. Like Mr. Pierce, he occupied the residence on a rental basis pending settlement. In urging that his initial occupancy should be regarded as occupancy of temporary

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quarters, the employee argued that he did not at that time have a valid contract to purchase the residence in that the initial sales contract had not been properly signed by the seller. We explained the basis for rejecting the claimant's argument that the residence became permanent quarters only upon the seller's execution of the sales agreement as follows:

"\* \* \* We have consistently held that the determination of the type of residence occupied, i.e., temporary or permanent, is based on the intent of the employee at the time he or a member of his family moves into the quarters which later becomes his permanent residence. B-174971, February 28, 1972, and B-177546, February 8, 1973.

"It is apparent in the present case that at the time Mr. Trest and his family moved into the dwelling for which he is claiming temporary quarters expenses, he had no intention of occupying it on a temporary basis. The fact that Mr. Trest was paying rent for the residence or that the seller did not sign the original sales contract is immaterial to the determination of intent with which he occupied the residence. Since Mr. Trest moved into his residence with the intention of remaining there permanently, we must conclude that as of August 22, 1972, he was occupying a permanent residence which under applicable regulations precludes him from any further entitlement to temporary quarters expenses."

Also see Douglas D. Mason, B-196284, August 14, 1980. In line with these decisions, Mr. Pierce's claim for temporary quarters subsistence allowance for the period in which he occupied the residence which he subsequently purchased is not reimbursable.

Paragraph 2-6.2d of the FTR prohibits reimbursement of any item which is found to be a finance charge under Regulation Z issued by the Board of Governors of the Federal

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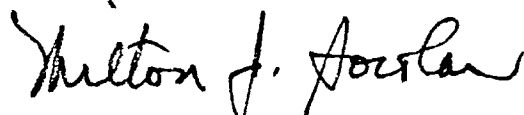
Reserve System in implementation of the Truth in Lending Act. In determining whether or not an item is part of a finance charge, the reviewing officials must examine it in light of Regulation Z (12 C.F.R. § 226.4 (1978)) and our decisions.

As the certifying officer has indicated, we have held that loan origination fees related to the processing and handling of the loan and computed as a percentage of the loan amount are finance charges which may not be reimbursed. Charles E. Berg, B-198475, October 17, 1980, and Harry J. Nelson, B-194974, May 5, 1981. Accordingly, the 1 percent loan origination fee paid by Mr. Pierce to the First National Bank of Anchorage is for disallowance.

In addition, we have held that the tax fee paid to the Alaska Realty Tax Service to report taxes and assessments on mortgaged real property is a finance charge and is not a reimbursable item of real estate expense. Jerrold J. Wahl, B-180981, October 1, 1974.

It appears from the submission that the extension fees were paid to extend the period of time for maintaining the loan commitment and would be in the nature of a commitment fee. We held in Richard W. Jones, B-191040, November 29, 1978, that the commitment fee is clearly required as an incident to the extension of credit, and, as such is part of the finance charge. Therefore, in the instant case this charge is not reimbursable.

Accordingly, the temporary quarters subsistence expenses and real estate expenses claimed may not be reimbursed.



Acting Comptroller General  
of the United States