

DECISION

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

FILE: B-214277

DATE: June 25, 1984

MATTER OF: Harvey B. Anderson

DIGEST:

An employee who relocated in connection with a permanent change of station claims reimbursement for seller's points or a loan discount fee which he paid as a part of the cost of selling his former residence. The claim may not be paid because, even though under Regulation Z, which implements the Federal Truth in Lending Act, seller's points are no longer included among finance charges, reimbursement for points or mortgage discounts as a miscellaneous expense of a real estate transaction is specifically prohibited by the Federal Travel Regulations and Volume 2 of the Joint Travel Regulations.

This action responds to a request for an advance decision as to whether an employee who relocated in connection with a permanent change of station is entitled to reimbursement of seller's points or a loan discount fee which he paid as a part of the expense of selling his residence at his former duty station.¹ Under current regulations, the employee is not entitled to reimbursement for seller's points or a loan discount fee.

In December 1982, Mr. Harvey B. Anderson, an employee of the Defense Logistics Agency, was transferred from Oxnard, California, to Phoenix, Arizona. He sold his residence in Oxnard on May 27, 1983. The purchase of his former residence was financed by a loan guaranteed by the Federal Housing Authority (FHA). As a result, he was required to make a payment of 5.75 points, here amounting to \$5,175. These seller's points constitute a loan discount

¹ This request for an advance decision was submitted by Mr. Herman C. Heiser, Director, Systems and Financial Management, Defense Contract Administration Services Region, Dallas, Defense Logistics Agency. The request was approved by the Per Diem, Travel and Transportation Allowance Committee and assigned Control Number 84-1.

fee, which is paid for the purpose of allowing the buyer to secure credit under certain loan terms. As a part of his relocation expenses, Mr. Anderson claims reimbursement for the loan discount fee, or the seller's points, that he paid.

A Federal employee who relocates in connection with a permanent change of station may, under the provisions of 5 U.S.C. § 5724a, be reimbursed for certain real estate expenses incurred in selling his former residence or purchasing a new residence. This statute is implemented by the Federal Travel Regulations, part 2, Chapter 6, incorp. by ref., 41 C.F.R. 101-7.003 (FTR). For civilian employees of the Department of Defense these regulations are reflected in Volume 2 of the Joint Travel Regulations (2 JTR) which are substantially identical.

Various miscellaneous expenses related to the real estate transactions for which a transferred employee may be reimbursed are listed in the FTR, para. 2-6.2d(1), as amended by General Services Administration Bulletin FPMR A-40, General Supplement 4 (August 23, 1982), and in 2 JTR, para. C14002-1d(1) (Change 208, February 1, 1983), both of which became effective on October 1, 1982. Nonreimbursable miscellaneous items of residence transactions are listed in 2 JTR, para. C14002-1d(2), and FTR para. 2-6.2d(2), the latter of which provides in relevant part:

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

* * * * *

"(b) Interest on loans, points, and mortgage discounts;

* * * * *

"(e) No fee, cost, charge or expense determined to be part of the finance charge under the Truth in Lending Act, Title I, Pub. L. 90-321, and Regulation Z issued in accordance with Pub. L. 90-321 by the Board of Governors of the Federal Reserve System,

unless specifically authorized in (1),
above . . ."

Under Regulation Z, 12 C.F.R. 226.4(b)(3), points (loan discount fees) are designated as finance charges and, therefore, have previously been considered nonreimbursable items of real estate transaction expenses under FTR para. 2-6.2d(2)(e) (2 JTR para. C14002-1d(2)5), as well as FTR para. 2-6.2d(2)(b) (2 JTR para. C14002-1d(2)2). Robin J. Zeldin, B-211262, August 12, 1983. However, as noted in the agency's submission, Regulation Z was amended, effective April 1, 1981, to exclude seller's points from finance charges. 12 C.F.R. 226.4(c)(5) (1983).

The opinion has been expressed that since seller's points are no longer considered finance charges for the purposes of Regulation Z, these points should be considered reimbursable expenses under FTR para. 2-6.2d(1). That view appears to be based on an analysis which concludes that the "interest on loans, points, and mortgage discounts" listed in FTR para. 2-6.2d(2)(b) as nonreimbursable items are all finance charges assessed by the creditor against the buyer, and since seller's points are no longer considered finance charges under Regulation Z, they are not included among the nonreimbursable items in FTR para. 2-6.2d(2)(b).

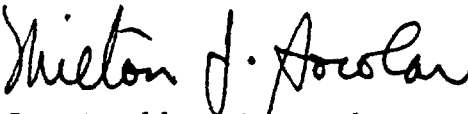
Both seller's points and buyer's points constitute mortgage discount fees or "interest on loans," (FTR para. 2-6.2d(2)(b)) paid in consideration for, or as a condition of, the extension of credit to the buyer under loan terms advantageous to the buyer. See Robert J. Zeldin, B-211262, August 12, 1983.

Thus, the fact that seller's points are no longer considered finance charges under Regulation Z and, therefore, not excluded from reimbursement under FTR para. 2-6.2d(2)(e) has no bearing on the fact that they may not be considered reimbursable expenses because they are mortgage discounts specifically excluded by FTR para. 2-6.2d(2)(b). Compare Patricia A. Grablin, B-211310, October 4, 1983.

Therefore, seller's points are not reimbursable under FTR para. 2-6.2d(1) or 2 JTR para. C14002-1d(1) as a fee or charge similar to other designated reimbursable miscellaneous real estate transaction expenses. Rather, reimbursement

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of seller's points or a loan discount fee is specifically prohibited under FTR para. 2-6.2d(2)(b) and 2 JTR para. C14002-1d(2)2.

for 
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