



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** James A. Schampers - Real Estate Expense  
Reimbursement - Residence Construction

**File:** B-233484

**Date:** July 6, 1990

---

### DIGEST

1. A transferred employee constructed a residence at his new permanent station rather than purchase an existing residence. The real estate expenses authorized under paragraph 2-6.2 of the Federal Travel Regulations to be reimbursed are those which are comparable to expenses incurred in connection with the purchase of an existing residence. Since the expenses incurred as a result of permanent financing of the residence are most representative of the expenses incurred to purchase an existing residence, the employee's entitlement is to be primarily based on the expenses attendant to that settlement. Ray F. Hunt, B-226271, Nov. 5, 1987.

2. A transferred employee constructed a residence at his new permanent station. Although the expenses authorized by paragraph 2-6.2 of the Federal Travel Regulations (FTR) to be reimbursed are those usually incurred incident to the securing of permanent financing upon completion of the residence, other expenses incurred prior to permanent financing also may be reimbursed so long as they are not a duplication of an expense item already allowed incident to that permanent financing, an expense uniquely applicable to the construction process, or a nonreimbursable item listed under FTR, para. 2-6.2d(2).

3. A transferred employee constructed a residence at his new permanent station. Fee paid to public officials for tax certificates showing that the property was not encumbered by unpaid taxes may be allowed. Section 1605(d)(1) of title 15, United States Code, exempts such fees from computation of finance charge incident to the extension of credit under the Truth in Lending Act. Wayne E. Holt, B-189295, Aug. 16, 1977, and John S. Derr, B-215709, Oct. 24, 1984, are overruled in part.

049458 / 142225

---

## DECISION

This decision is in response to a request from Mr. J. R. Burkett, Director, Division of Finance, Dallas Regional Office, Department of Health and Human Services (HHS). He requests a review of the reimbursement entitlement of Mr. James A. Schampers incident to the construction of a residence near his new duty station. We conclude that he may be reimbursed an additional amount for title insurance, but that he has been incorrectly reimbursed for several other expense items.

## BACKGROUND

Mr. Schampers, an employee of HHS, was transferred to Waco, Texas, in November 1987. He purchased several acres of land and had a residence constructed on it. As part of his real estate claim, he was reimbursed \$1,034.80 for closing costs on the purchase of the unimproved property. After he secured a construction loan he was reimbursed an additional \$1,014 as closing costs on that loan. Following completion of the residence, the land purchase loan and the construction loan were consolidated into a permanent mortgage loan. He sought reimbursement for the closing costs incurred at that settlement, \$3,064.37. The agency limited reimbursement to \$2,134, by disallowing \$930.37 as the cost of an owner's title insurance policy. Mr. Schampers appealed that determination.

Our review of the entire file shows that a number of other expense items were not properly reimbursed by the agency. Each of these is discussed below.

## ANALYSIS AND CONCLUSION

The statutory provisions governing reimbursement for real estate expenses incident to a transfer are contained in 5 U.S.C. § 5724a(a)(4) (1988) and regulations issued pursuant thereto. Under the Federal Travel Regulations a transferred employee is entitled to be reimbursed real estate expenses for the purchase of an existing residence. If he decides to construct a residence rather than purchase an existing residence, the only reimbursable expenses incident to that construction are those which are comparable to expenses which would be reimbursable in connection with a

residence purchase.<sup>1/</sup> Any expenses incurred which relate particularly to the construction process are not allowable. Richard T. Bible, B-208302, July 17, 1984.

In the present case, each stage of the building process, from land purchase to permanent financing involved a number of expenses which would be appropriately reimbursable had Mr. Schampers purchased an existing residence. However, an employee may be reimbursed only once for each type of expense that is allowable under the law and regulations. Michael D. May, B-223112, Nov. 25, 1986. Since expenses incurred incident to permanent mortgage financing are most representative of expenses an employee would incur to purchase an existing residence, determinations of entitlement should be primarily based on an examination of that settlement. Ray F. Hunt, B-226271, Nov. 5, 1987. In addition, other expenses incurred prior to permanent financing may be reimbursed as long as they are not a duplication of an expense item already allowed, an expense uniquely applicable to construction, or a nonreimbursable item under FTR, para. 2-6.2d(2). Ray F. Hunt, supra.

#### Duplicate Fee Charges

Mr. Schampers secured a permanent mortgage of \$121,500. This represented a consolidation of his prior land purchase and construction loans. As part of that consolidation, he was required to pay a 1 percent loan origination fee. That fee may be reimbursed. Roger J. Salem, 63 Comp. Gen. 456 (1984); Mark Kroczyński, 64 Comp. Gen. 306 (1985). However, he was also charged loan origination fees in connection with each of his prior loans. Since the amount borrowed at the time of permanent financing simply consolidated the prior loans, the earlier loan origination fees are duplicative of the fee allowed, and may not be reimbursed. Michael D. May, supra. The same is true for recording fees and credit report charges. Since only one set of recording fees (\$23) and one credit report (\$37.80) would be required when an existing home is purchased, only one of each may be reimbursed Mr. Schampers. Michael D. May, supra.

#### Nonduplicate Fee Charges

Fees charged at the permanent financing settlement which are of a type applicable to the purchase of an existing residence and which are neither questionable nor duplicative

---

<sup>1/</sup> Federal Travel Regulations (FTR), para. 2-6.2d(1)(j) (Supp. 4, Aug. 23, 1982); incorp. by ref., 41 C.F.R. § 101-7.003 (1987).

are: closing fee, document preparation fee, and a required guaranty fee to the State Board of Insurance. The cost of these items may be reimbursed to Mr. Schampers. However, an underwriting fee charged at that settlement may not be reimbursed. We have held that fees charged by a lender's underwriter to review acceptability of loans constitute finance charges incident to the extension of credit and are not reimbursable. George J. Wehrstedt, B-192851, May 11, 1979; Kenneth R. Pedde, B-223797, Apr. 20, 1987.

#### Property Survey Fee

A fee of \$178.20 was charged at final settlement for a property survey, but no similar fee was included in the earlier settlements. Property surveys usually are performed for one of two purposes. One purpose is to establish the exterior measurements and positioning of the foundation of a structure to be constructed on property. Such a survey may not be reimbursed since it is unique to the construction process. Larry R. Dreihaupt, B-205510, Feb. 8, 1982. The other purpose is to establish the perimeter and configuration of the property. Where a lender requires such a survey for financing purposes, reimbursement is proper, subject to a determination that the amount of the charge is customary for the area. Dennis R. Smetana, B-206051, Sept. 29, 1982. Mr. Schampers may be reimbursed the survey fee only in the latter circumstance.

#### Property Appraisal Fee

This service is often required by a lender to establish the value of the residence for permanent financing purposes. In this case, not only was there an appraisal fee charged (\$55) at the settlement for the permanent mortgage loan, but also a similar fee (\$350) was paid in connection with the land purchase loan in March 1988. While the earlier charge may be duplicative of the later appraisal charge, that may not be the case. Since there had been the earlier appraisal of the unimproved property to establish its value for mortgage purposes, it is possible that the permanent mortgage lender thereafter only required appraisal of the residential structure to complete the appraisal process. Therefore, it is our view that if the appraisal fee charged at the settlement of the permanent mortgage loan was for appraisal of the completed structure, both appraisal fees may be reimbursed, subject to a determination that the combined cost was consistent with the customary charge in the area to appraise property with an existing residence comparable to that built for Mr. Schampers.

## Title Insurance

Paragraph 2-6.2d(2) of the FTR expressly prohibits reimbursement for the cost of owner's title insurance. However, FTR, 2-6.2d(1)(i) allows the cost of owner's title insurance where it is specifically required by the lender as a condition of the mortgage financing, or is inseparable from required lender's title insurance.

At final settlement, Mr. Schampers paid \$990.37 for title insurance, covering both the lender and the owner for \$121,500. The agency allowed only \$60 based on information from the title insurance company that in a normal sale the cost would be \$930.37 for the owner's policy and \$60 for the lender's policy. Mr. Schampers appeals on the basis of further information from the title insurance company that where, as here, a person converts an interim loan to a permanent loan the fees would be \$40 for the owner's policy and \$950.37 for the lender's policy.

Since Mr. Schampers was required by the lender to provide a lender's title insurance policy, but not an owner's policy in connection with the permanent mortgage loan, he may be reimbursed \$950.37 for the lender's title insurance, but not \$40 for the owner's policy.

## Courier and Express Fees

As to the claim for reimbursement of a courier fee and Federal Express fee, FTR, para. 2-6.2d(1) and (2) list the miscellaneous real estate expense items which are reimbursable and nonreimbursable, respectively. Priority mail or delivery fees are not items listed in paragraph 2-6.2d(1)(a) through (e), and neither item qualifies under paragraph 2-6.2d(1)(f) as being similar in nature to those in (a) through (e) so as to permit reimbursement. Edward W. Aitken, 63 Comp. Gen. 355 (1984). Additionally, FTR, para. 2-6.2f authorizes reimbursement for other incidental charges which are imposed on a transferred employee as a required service in the residence sale and purchase process. It is not clear from the record whether either of those services were required by the lender, or were merely used because they were convenient and expeditious. If the services were not required, the costs may not be reimbursed. Mark B. Gregory, B-229230, Mar. 14, 1988.

## Sewer and Construction Inspection Fees

A fee charged to inspect new construction to insure compliance with local ordinances and state law is unique to the construction process. Therefore, the charge for that

fee may not be reimbursed. Larry R. Dreihaup, supra. However, a similar conclusion cannot be automatically reached regarding the sewer inspection fee. We understand that in many jurisdictions sanitary sewer hookups and newly installed septic systems must be inspected before residential occupancy permits are issued. Where that is the case, it is unique to the construction process, and the fee is not reimbursable. We are also aware that some jurisdictions require such an inspection each time an existing residence is purchased, or may be required by the lender. Therefore, if such an inspection is required by law in the locality of Mr. Schampers's residence for all residence transactions, or by Mr. Schampers's lender, the sewer inspection fee may be allowed.

#### Tax Certificates

In decision John S. Derr, B-215709, Oct. 24, 1984, citing to decision Wayne E. Holt, B-189295, Aug. 16, 1977, we held that a fee charged by a lender to an employee as purchaser for tax certificates is a charge imposed incident to extension of credit and, thus, is nonreimbursable under FTR, para. 2-6.2d(2)(e). That FTR provision excludes all fees, costs, charges or expenses determined to be a finance charge under section 106 of the Truth in Lending Act, 15 U.S.C. § 1605 (1988).<sup>2/</sup>

We note, however, that not all charges made by a lender come within the broad category of finance charges which the FTR deems nonreimbursable. Section 1605(d)(1) of title 15, United States Code, specifically exempts "fees and charges . . . paid to public officials for determining the existence of . . . any security relating to the credit transaction."

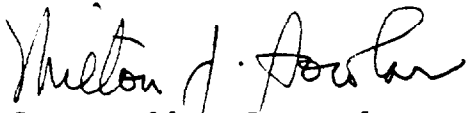
In the present case, the \$14 fee charged is identified on the permanent financing settlement sheet as "Tax certificates to Texas Central Title, Inc." It appears that the fee was paid to local officials for certificates to demonstrate that title to the property was not encumbered by unpaid taxes. As such, the fee imposed qualifies for exemption under 15 U.S.C. § 1605(d)(1) and may be reimbursed. To the extent that our decisions in Wayne E. Holt, supra, and John S. Derr, supra, disallowed similar tax certificate fees, they are overruled.

---

<sup>2/</sup> See also Regulation Z, 12 C.F.R. § 226 (1989).

### Attorney's Fees and Escrow Fee

There are two additional items not included in the final settlement summary, but which do appear as charges on the settlement summaries at the earlier closings. They are attorney's fees - \$65 and \$75, and an escrow fee - \$35. Both of these items are fees often charged in connection with financing the purchase of an existing residence. Therefore, the escrow fee may be paid, but only the attorney's fee associated with the purchase of the undeveloped property may be paid, since it is more akin to the fee Mr. Schampers would have been required to pay had he purchased an existing residence. Robert W. Webster, 63 Comp. Gen. 68 (1983).

*for*   
Comptroller General  
of the United States