



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Joyce M. Rudd - Real Estate Transaction -
Reimbursement for Mortgage Credit Certificate
Application Fee

File: B-245614

Date: March 20, 1992

DIGEST

A transferred employee, who purchased a residence at her new duty station, requests reimbursement of a Mortgage Credit Certificate application fee. The claim was denied by her employing agency as a nonreimbursable finance charge. Although the fee is not a finance charge since it was paid to a third party and was not a prerequisite for financing, the fee may not be reimbursed since it is not identified in the Federal Travel Regulation (FTR) as a reimbursable expense, nor is it similar in nature to other fees and charges listed in the FTR in 41 C.F.R. § 302-6.2(d) (i) through (v), nor is it a fee for a "required service" under FTR § 302-6.2(f).

DECISION

A transferred employee requests reimbursement for a \$250 Mortgage Credit Certificate (MCC) fee incurred incident to the purchase of a residence at her new duty station.¹ The issue presented is whether the MCC fee is reimbursable as a real estate expense under the Federal Travel Regulation.² We conclude that the fee may not be reimbursed.

BACKGROUND

Ms. Joyce M. Rudd, a civilian employee of the Department of the Army, transferred to Fort Lewis, Washington. Ms. Rudd

¹The request was submitted by the Per Diem, Travel and Transportation Allowance Committee, PDTATAC Control Number 91-05.

²The Army refers to provisions in Volume 2, Joint Travel Regulations (2 JTR). Since the Federal Travel Regulation (FTR) are governing, and contain similar provisions, all further text references are to the FTR.

purchased a residence in June 1990 in Lacey, Washington, and was assessed a \$250 MCC application fee. The item appears on Ms. Rudd's settlement sheet as an item payable in connection with a loan. A loan origination fee of \$151 is also listed separately.

The MCC program was established by Congress to provide first-time home buyers an opportunity to purchase single-family homes. Qualified buyers receive a direct tax credit against their federal income tax liability computed on the basis of a percentage of the annual interest paid on the real estate loan. See 26 U.S.C. § 25 (1988).

The MCC program is administered by the various participating states, in this case, the Washington State Housing Finance Commission (HFC). WASH. REV. CODE ANN. § 43.100 (1991). Instructions issued by the Commission state that an application for an MCC is submitted to a participating lender at the time of loan application. If the loan is approved, the participating lender then forwards the MCC application, loan application, legally binding earnest money agreement, and the applicant's check for \$250 to the MCC Program Administrator. The Program Administrator is the Commission's agent to assure compliance with tax regulations and the Commission's policies. If the loan closes and the applicant qualifies for the MCC, the Commission will issue the MCC within 30 days.

The program does not delegate MCC approval authority to individual lenders. The participating lender receives a \$50 fee when the applicant's MCC is issued. If the MCC is not issued, the applicant receives a refund of \$200 and the Commission retains \$50 as a processing fee. The instructions also indicate that the tax credit is used by many lenders to assist in qualifying the borrowers, and that the projected mortgage credit may be used to calculate income when an individual is applying for a loan.

The Army denied Ms. Rudd's request for reimbursement on the basis that the MCC fee was a nonreimbursable finance expense incurred in obtaining a loan.

OPINION

Under the provisions of 5 U.S.C. § 5724a(a)(4) (1988), and the implementing regulations in the Federal Travel Regulation (FTR), 41 C.F.R. § 302-6.2 (1991),³ transferred employees are entitled to be reimbursed for certain miscellaneous expenses in connection with the purchase of a residence, provided they are customarily paid by the purchaser

³2 JTR C14002 (Ch. 304, Feb. 1, 1991).

of a residence at the new official station, and to the extent they do not exceed amounts customarily paid in the locality of the residence.

The FTR also prohibits reimbursement, with some exceptions, of items that are considered finance charges incident to obtaining a loan. 41 C.F.R. § 302-6.2(d)(2)(v) (1991). As previously stated, the Army denied reimbursement to Ms. Rudd on this basis. We disagree with the Army that an MCC fee is a finance charge, but we conclude that it may not be allowed for other reasons.

Charges imposed on the consumer by a third party for services not required by the creditor are not finance charges, as long as the creditor does not retain the charges. 12 C.F.R. § 226.4(a)3, Supp. I (1990). In this case, the Washington State HFC, and not the lender, receives and retains \$200 of the \$250 fee, if the loan is approved. The \$50 paid to the lender is merely a processing cost since the lender is not the party authorized to issue the MCC. Further, instructions issued by the Washington State HFC indicate that lenders will use standard FHA, VA loan, and conventional loan underwriting guidelines in determining if an applicant qualifies for a loan.

Thus, an MCC application fee is not a prerequisite for a loan. We were also informally advised by an official of the Washington State HFC that the fee is not a finance charge since the loan is already approved by the time the MCC application is received. The local Housing and Urban Development Office was contacted and also concurred in this determination. Therefore, we conclude that an MCC application fee is not a finance charge.

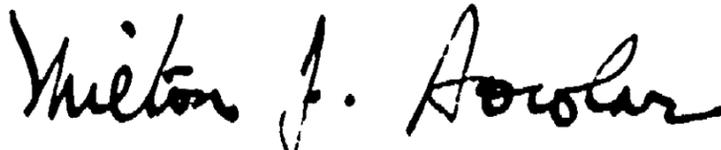
However, the FTR requires that in order for an item to be reimbursable as a miscellaneous real estate expense it must be specifically listed in 41 C.F.R. § 302-6.2(d)(1)(i) through (v), or similar in nature to those fees and charges listed therein. 41 C.F.R. § 302-6.2(d)(1)(vi). We have held that such a determination is a prerequisite to reimbursement. George C. Souders, 68 Comp. Gen. 373 (1989); Mark B. Gregory, B-229230, Mar. 14, 1988.

The MCC fee is not specifically listed in 41 C.F.R. § 302-6.2(d)(1), nor is it similar in nature to those expenses listed in (d)(1)(i) through (v) of that provision, e.g., a FHA or VA loan application fee, which is charged to all loan applicants. Rather, it is a fee paid by qualified first-time home buyers in order to obtain a substantial income tax benefit provided for by Congress.

Ms. Rudd also refers to another provision of the FTR as providing authority for reimbursement of an MCC credit fee,

41 C.F.R. § 302-6.2(f),⁴ The provision refers to incidental charges made for required services in selling and purchasing residences. The term "required" as used in the applicable statute and regulations relates only to those services which are imposed on the employee by state or local law or by the lender as a precondition to the sale or purchase of a residence, e.g., termite inspection fee, and roof inspection fee, Leonard L. Garofolo, 67 Comp. Gen. 449 (1988). See Paul D. Atkinson, 70 Comp. Gen. 362 (1991); Ronald S. Taylor, 60 Comp. Gen. 531 (1981). An MCC application fee is not required by the lender and is purely voluntary on the part of those eligible for the tax credit.

Accordingly, the \$250 MCC application fee may not be reimbursed.

for 
Comptroller General
of the United States

⁴2 JTR C14002-f (ch. 315, Jan. 1, 1992).