

DOCUMENT RESUME

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Real Estate Expenses: Mortgage Executed after Settlement.
B-188716. July 6, 1977. 5 pp.

Decision re: James T. Rideoutte; by Robert P. Keller, Deputy
Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation
(305).

Contact: Office of the General Counsel: Transportation Law.
Budget Function: General Government: Central Personnel
Management (805).

Organization Concerned: Internal Revenue Service.

Authority: F.T.R. (FPMR 101-7), para. 2-6.1, 2-6.2. 55 Comp.
Gen. 679. B-184703 (1976). B-186579 (1976).

Florence M. Oakley, Authorized Certifying Officer of
the Mid-Atlantic Region of the Internal Revenue Service (IRS),
requested an advance decision with regard to the claim of an IRS
employee for expenses incurred in the purchase of a residence
incident to a transfer of official duty station. The employee,
who obtained a personal loan in order to purchase a new
residence pending receipt of proceeds from the sale of his
former residence and who executed a first mortgage against the
new residence following receipt of the money from the sale,
could be reimbursed expenses in connection with the mortgage
transaction. (Author/SC)

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DECISION

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

FILE: D-188710

DATE: JUL 6 1977

MATTER OF: James T. Rideoutte - Real estate expenses -
Mortgage executed after settlement

DIGEST: Employee who obtained a personal interim financing loan in order to purchase a new residence pending receipt of the proceeds from the sale of his former residence and who, three months later after receiving those proceeds, provided for permanent financing by executing a first mortgage against the newly purchased residence, may be reimbursed expenses in connection with that mortgage transaction as if the mortgage had been executed simultaneously with the earlier transfer of title in the residence to the employee.

Where settlement for purchase of property and execution of mortgage on that property three months later are to be treated as having occurred simultaneously for purposes of real estate expense reimbursement, employee may be reimbursed separately incurred expenses for mortgage and owner's title insurance to the extent the total amount does not exceed the all-inclusive fee for both purchased at the same time, in view of the requirement of Pennsylvania law that one who obtains mortgage title insurance obtain owner's coverage as well.

This action is in response to a request for an advance decision dated August 27, 1975, from Florence M. Oakley, an authorized certifying officer, Department of the Treasury, Internal Revenue Service, Mid-Atlantic Region, and concerns the claim of James T. Rideoutte, an employee of the Internal Revenue Service, for expenses incurred in the purchase of his residence upon transfer of official duty station from Des Moines, Iowa, to Philadelphia, Pennsylvania.

On January 19, 1975, Mr. Rideoutte entered into a contract to sell his Des Moines residence with a stipulation that closing occur on or before February 13, 1975. The following day he

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executed a contract to purchase a new home, with settlement to be on or before February 26, 1975. Settlement on the sale transaction was in fact held Friday, February 14, 1975, and settlement on the purchase transaction was held on Tuesday, February 19, 1975. The purchase settlement was a cash transaction. Mr. Rideoutte has explained that because of the short period of time between the dates set by the respective contracts for settlement of the sale and purchase transactions, he obtained a short term loan to facilitate his purchase of the new residence pending his receipt of the proceeds from the sale transaction. We understand that this was a personal loan and that it was not secured by his assignment of any interest in the residence purchased.

On May 13, 1975, Mr. Rideoutte obtained permanent financing for the purchase of his new residence by executing a mortgage against that property for \$15,000. Presumably, the proceeds from that mortgage and from the sale of his Des Moines residence were used to satisfy his obligation with respect to the personal loan he had earlier obtained.

The certifying officer has raised a question concerning payment of expenses associated with the settlement of the mortgage transaction inasmuch as the mortgage was not executed simultaneously with the transfer of title to the employee's new residence. Noting that with the exception of the \$94 fee for title insurance, the mortgage transaction expenses incurred on May 13 do not appear to duplicate those incurred in connection with the February 18 settlement, the certifying officer asks whether those expenses may be reimbursed.

The record indicates that Mr. Rideoutte has been reimbursed the following real estate transaction expenses incurred in connection with the February 18, 1975, settlement:

Title Company charges	\$ 445
Preparation of conveyance instrument	20
Recording fees	11
Notary fees	5
Pa. transfer tax	620
Total	\$1,101

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The specific expenses incurred incident to Mr. Rideoutta's execution of a mortgage on that property on May 13 are as follows:

Title insurance	\$ 94.00
Appraisal fee and credit report	93.00
Fee for endorsement of existing boundaries (in lieu of survey)	6.75
Fee for recording mortgage	9.00
Notary fee	<u>10.00</u>
Total	\$212.75

In 55 Comp. Gen. 679 (1976), we considered the case of an employee who obtained interim financing by means of what was understood to be a personal loan to purchase a new residence pending receipt of the proceeds from the sale of his former residence. The employee claimed expenses, including interest, associated with that short term loan. Because the loan was not secured by the property being purchased, by means of either a mortgage or deed of trust, we hold that under applicable regulations the expenses claimed could not be reimbursed. Compare B-184703, April 30, 1976, where interim financing was secured by assignment of the employee's interest in the property being purchased and was, in effect, a second mortgage against that property.

Mr. Rideoutta does not in fact claim expenses associated with the personal loan he obtained in order to finance the purchase of his residence. The expenses he claims are those associated with the placing of a first mortgage against the property purchased. In this regard, paragraphs 2-6.1 and 2-6.2 of the Federal Travel Regulations, (FPMR 101-7, May 1973) are controlling. Specifically, subparagraph 2-6.2b provides for reimbursement of the cost of an appraisal; subparagraph 2-6.2c provides for reimbursement of the cost of preparing credit reports, and subparagraph 2-6.2d provides for reimbursement of the cost of a mortgage title insurance policy. Notary and recording fees and

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fees in lieu of survey would be reimbursable to the extent they do not exceed the amount customarily paid in the locality, if customarily paid by the purchaser of a residence in accordance with FIR, subparagraph 2-6.2d.

We find nothing in the applicable regulations to preclude payment of the expenses claimed by Mr. Rideoutte, even though they were incurred in connection with a mortgage that was not executed contemporaneously with the transfer of title in the property to the employee. Paragraph 2-6.1 of the FIR would appear to require only that the mortgage transaction expenses be required to be paid by the employee in connection with his purchase of one dwelling at his new official station and that those expenses be incurred within the time period established by subparagraph 2-6.1e. No explanation has been provided as to why Mr. Rideoutte did not negotiate the personal loan for \$15,000 less and place a mortgage on the property at the February 18 settlement date. However, where he placed a first mortgage on the property three months later, within less than one year of his transfer date, there is no question that the mortgage transaction was in connection with the purchase of that residence. Therefore, the employee may be reimbursed expenses associated with that mortgage transaction to the same extent those expenses would be reimbursable if the mortgage had been consummated simultaneously with the transfer of title to the property on February 18. While the regulations are written on the assumption that any mortgage placed against the new residence will be executed simultaneously with its purchase, we find nothing to preclude reimbursement of expenses associated with a first mortgage executed thereafter where it is clear that the mortgage is executed in connection with the purchase of that same property and not for some unrelated purpose.

In reviewing the record in this case, we note that Mr. Rideoutte has been reimbursed \$445 in "Title Company charges" in connection with the February 18 settlement. Since there was no mortgage involved in that settlement transaction, those charges were clearly not for a mortgage title policy, but were presumably for an owner's title policy which is not generally a reimbursable item of expense in view of the following language of FIR, paragraph 2-6.2d:

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"d. Miscellaneous expenses. * * * The cost of a mortgage title policy paid for by the employee on a residence purchased by him is reimbursable but costs of other types of insurance paid for by him, such as an owner's title policy, a 'record title' policy, mortgage insurance, and insurance against damage or loss of property, are not reimbursable items of expense.

However, under Pennsylvania law, one who obtains a mortgage title policy upon purchasing a home in that state must obtain owner's coverage as well. Thus, in B-126579, October 28, 1976, we held that the purchaser of a Pennsylvania residence could be reimbursed an all-inclusive title insurance fee for a policy providing both mortgage and owner's title insurance. In accordance with our above holding that Mr. Rideoutte may be reimbursed expenses associated with the May 13 mortgage transaction as if it had occurred simultaneously with the February 18 purchase settlement, he may be reimbursed expenses for title insurance that do not exceed those which he would have been required to pay to obtain a mortgage title policy had he not first purchased an owner's title policy. We assume that this amount would be something less than the \$539 (\$445 + \$94) amount he paid to purchase the two policies separately.

R.F.KELLER

Deputy Comptroller General
of the United States