



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 13, 2018

CBCA 6163-RELO

In the Matter of TAMMY J. GUHR

Tammy J. Guhr, Hawley, TX, Claimant.

Gregory Billings, Attorney Advisor, Air Force Global Strike Command, Department of the Air Force, Dyes Air Force Base, TX, appearing for Department of the Air Force.

ZISCHKAU, Board Judge.

In October 2017, the agency transferred the claimant, Tammy J. Guhr, to a new permanent duty station where she was authorized reimbursement of real estate expenses incurred with the purchase of a residence. Ms. Guhr purchased a manufactured home as a residence in December 2017. Ms. Guhr seeks reimbursement of \$2943 in sales tax she paid on the home purchase. The agency denied Ms. Guhr's request for reimbursement because it believed the expense was not in connection with conveyance of the property, but rather was a type of expense that resulted from construction of a residence, which is excluded by 41 CFR 302-11.202(h) (2017). We sustain Ms. Guhr's request for reimbursement because the tax was in connection with the conveyance of the home.

Discussion

Agencies are required to reimburse expenses in connection with the conveyance of a property, but should not reimburse expenses that result from construction of a residence, as the Federal Travel Regulation (FTR) specifically excludes them. 41 CFR 302-11.202(h). However, expenses in connection with the conveyance of property are reimbursable because this treats home-builders and home-buyers equally. *Kathy M. Richard*, CBCA 1793-RELO, 10-1 BCA ¶ 34,375, at 169,734.

Transfer taxes for the sale or purchase of a residence are allowable because they are considered expenses in connection with the conveyance of property. *Ernest B. Fitzpatrick, III*, GSBICA 15629-RELO, 02-1 BCA ¶ 31,679, at 156,548 (2001). When a sales tax is

necessary on a purchase transaction, and is not a tax on the property itself, then it should be considered a reimbursable transfer tax. *Nick V. Colucci*, GSBCA 16424-RELO, 04-2 BCA ¶ 32,719, at 161,876 (stating that a transfer tax is a levy imposed upon the conveyance of real estate, which is a mandatory charge imposed in order to complete a sale and is part of the cost of the transaction); *Kevin R. McLane*, GSBCA 14095-RELO, 97-2 BCA ¶ 29,212, at 145,386 (citing *Jerry D. Brite*, B-196527 (Dec. 29, 1980)).

In order to decide if the sales tax on the residence purchased by Ms. Guhr is a reimbursable tax, we must classify the type of manufactured residence as either a mobile home or a modular home. A mobile home is defined as a trailer or dwelling that is manufactured and designed to be moved overland, either by self-propulsion or by towing. *See* 41 CFR 300-3.1. By contrast, a modular home is constructed on site. *See Fitzpatrick*, 02-1 BCA at 156,548.

Here, the agency does not believe that the sales tax on the purchase of Ms. Guhr's manufactured home is an expense in connection with the conveyance of property. Rather, the agency believes that it is an expense that results from construction of a residence. The agency cites *Fitzpatrick* for denying Ms. Guhr's claim. However, unlike the home in *Fitzpatrick*, which was constructed on-site and was classified as a modular home, Ms. Guhr's home was a pre-constructed mobile home. We believe that the agency improperly categorized Ms. Guhr's home as a modular home instead of as a mobile home. Because Ms. Guhr's home is a mobile home, the sales tax is reimbursable because it is a reimbursable transfer tax related to the conveyance of property rather than a tax related to the construction of a residence. *Colucci*, 04-2 BCA at 161,876.

Decision

We sustain the claim. The agency shall reimburse Ms. Guhr the \$2943 sales tax.

Jonathan D. Zischkau

JONATHAN D. ZISCHKAU

Board Judge