



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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December 2, 2014

CBCA 3914-RELO

In the Matter of ADAM J. DURANDO

Adam J. Durando, Dudley, MA, Claimant.

Anne M. Schmitt-Shoemaker, Deputy Director Finance, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

**McCANN**, Board Judge.

The United States Army Corps of Engineers issued permanent change of station orders to Adam J. Durando in April 2013, transferring him from California to Massachusetts. The Corps paid him relocation benefits, including a withholding tax allowance (WTA), in that year. (It also paid him other relocation benefits in 2014, but those are not at issue in this case.) In 2014, the Corps demanded that Mr. Durando repay some of the benefits he had received in 2013. Mr. Durando contests the validity of that demand.

The benefits the Corps paid to Mr. Durando in 2013 totaled \$9157.74, covering en route travel, a miscellaneous expense allowance, and temporary quarters subsistence expenses. The last two of these benefits are taxable income to the recipient. Under statute, an agency is required to supplement taxable relocation benefits with an additional sum to reimburse the employee for “substantially all of the Federal, State, and local income taxes incurred” by the employee or the employee’s spouse as a result of receiving the benefits. 5 U.S.C. § 5724b (2012). The amount of this additional sum, called a relocation income tax (RIT) allowance, is determined under formulas prescribed in the Federal Travel Regulation (FTR). 41 CFR pt. 302-17 (2012).

As we have explained:

The regulation establishes a two-step process for determining an employee's RIT allowance. In the year in which the agency pays the employee relocation benefits ("Year 1"), it also pays a withholding tax allowance (WTA), which is intended to be a rough approximation of the employee's increased income tax liability that results from receipt of the benefits and the WTA. 41 CFR 302-17.5(e), (n), -17.7(a). The WTA is calculated at a flat rate based on a marginal tax rate of 28%, regardless of the employee's actual tax bracket. *Id.* 302-17.7(c). For the following year ("Year 2"), the agency calculates a RIT allowance which is more appropriately crafted to the employee's tax situation. This second step, determination of the RIT allowance itself, either reimburses the employee for any added tax liability that was not reimbursed by payment of the WTA or causes the employee to repay any excessive amount of WTA. *Id.* 302-17.5(f)(2), (m), -17.8.

*James V. Camillocci*, CBCA 1709-RELO, 10-1 BCA ¶ 34,320 (2009).

The amount of Mr. Durando's taxable benefits in 2013 was \$8230. The Corps, using a marginal tax rate of 25% rather than 28%, paid him an additional \$2743.33 in WTA in 2013, which was "Year 1," to use the FTR's terminology.<sup>1</sup> For 2014 ("Year 2"), the Corps determined that the correct marginal tax rate for Mr. Durando was 20.6525%, covering federal and state income taxes. We afforded the employee an opportunity to contest this rate, but he did not respond. The RIT allowance, using the rate determined by the Corps, is \$2142.10.

Thus, the additional amount to reimburse Mr. Durando for substantially all of the income taxes he incurred for 2013, appropriately crafted to his circumstances, was \$601.23 less than the amount he was paid in 2013. The Corps was correct in demanding that Mr. Durando repay this money.

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R. ANTHONY McCANN  
Board Judge

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<sup>1</sup> The net amount received by Mr. Durando was not the total of these two figures. It was calculated by including the non-taxable reimbursement for en route travel and subtracting amounts withheld to cover federal income, Social Security, and Medicare taxes.

