



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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December 23, 2015

CBCA 4780- RELO

In the Matter of DONOVAN DEKREY

Donovan Dekrey, Blunt, SD, Claimant.

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

**POLLACK**, Board Judge.

Claimant, Donovan Dekrey, challenges the United States Army Corps of Engineers (Corps) determination that he owes the agency \$2860.94 for the agency's overpayment of a relocation income tax (RIT) allowance. He asks this Board to review the agency's assessment of the overpayment. We find that the agency has properly calculated the amount of the RIT in accordance with the applicable regulations. Therefore, claimant is required to return to the agency the \$2860.94 overpayment.

Background

The Corps transferred Mr. Dekrey to Pierre, South Dakota. Mr. Dekrey moved early in 2014, and in doing so, he incurred expenses which the Corps reimbursed. The Corps determined that \$18,238.47 of its payment was taxable. Under statute, the Government is to add to the amount of taxable reimbursements a sum which is equal to "substantially all of the Federal, State, and local income taxes incurred by a transferred employee, or by an employee and such employee's spouse (if filing jointly)" for these reimbursements. 5 U.S.C. § 5724b(a) (2012). As a result of this added payment, the employee is effectively allowed to keep all of the reimbursements, net of taxes. The Federal Travel Regulation (FTR), at 41 CFR pt. 302-17 (2013), implements this law by establishing a process for calculating the amount of payment. The Corps paid Mr. Dekrey \$6079.49 in withholding tax allowance (WTA) during 2014, in compliance with this statute and regulation.

In May 2015, the Corps demanded that Mr. Dekrey refund \$2860.94 of the amounts it had paid him in 2014, calling this amount an “overpayment of withholding tax allowance (WTA) paid on PCS [permanent change of station] reimbursement 2014.” Mr. Dekrey asks us to review whether this demand is fairly made.

### Discussion

As we have previously held:

Relocation benefits paid by the Government to employees whom it transfers from one permanent duty station to another are generally considered taxable income to the recipients. To cover the increased federal, state, and local tax liability resulting from receipt of the benefits, Congress has authorized agencies to pay an additional sum to transferred employees. 5 U.S.C. § 5724b(a) (2006). This additional sum is referred to as a RIT allowance. 41 CFR 302-17.1 (2007). The purpose of the RIT allowance is to offset the extra income taxes that employees are required to pay because they must declare certain relocation benefits as taxable income.

The procedures for calculating the RIT allowance are set forth in the FTR and are based on certain assumptions jointly developed by the General Services Administration and the Internal Revenue Service. 41 CFR 302-17.8(b)(1). The FTR establishes a two-step process for determining an employee’s RIT allowance. In the year in which the agency pays the employee relocation benefits (referred to as Year 1), it also pays to the employee a WTA, which is intended to be a rough approximation of the employee’s increased income tax liability that results from receipt of the relocation benefits and the WTA. *Id.* 302-17.5(e), (n), -17.7(a). In the following year (referred to as 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; *see generally James V. Cammillocci*, CBCA 1709-RELO, 10-1 BCA ¶ 34,320 (2009); *Eddie D. West*, CBCA 790-RELO, 07-2 BCA ¶ 33,662; *Paula M. Stead*, GSBCA 16506-RELO, 05-1 BCA ¶ 32,874; *Philippe J. Minard*, GSBCA 15632-RELO, 01-2 BCA ¶ 31,631; *William A. Lewis*, GSBCA 14367-RELO, 98-1 BCA ¶ 29,532. Thus, where the calculation of the RIT allowance shows that the agency overpaid the WTA, the employee must repay the excess WTA to the agency. *Kenneth G. Kanik*, GSBCA 16034-RELO, 04-1 BCA ¶ 32,428 (2009).

*Charles W. Bell*, CBCA 1980-RELO, 10-2 BCA ¶ 34,484.

The Corps followed this procedure when it determined the RIT allowance for Mr. Dekrey. The only jurisdiction which imposed a tax on the employee's income was the Federal Government; neither the State of South Dakota nor the locality where he lived imposed a tax on individuals' income. The Corps determined, using the tax tables prescribed by the FTR, at 41 CFR 302-17.8(e)(1), -17.14, that based on the income Mr. Dekrey reported, the marginal tax rate on his income was 15%. Because the WTA calculation had been based on the assumption that his marginal tax rate was 25%, the WTA had been excessive. The RIT allowance caused the employee to repay the excessive amount of WTA, which the agency properly calculated as \$2860.94. In other words, if the Corps had used a 15% tax rate, instead of 25%, in calculating the WTA, it would have provided Mr. Dekrey \$2860.94 less than it did in 2014. The agency is entitled to recover this amount from the employee.

#### Decision

The claim is denied and claimant is required to return the \$2860.94 overpayment.

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HOWARD A. POLLACK  
Board Judge