



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 28, 2007

CBCA 790-RELO

In the Matter of EDDIE D. WEST

Eddie D. West, Norman, OK, Claimant.

Linda D. McMillin, 72 Comptroller Squadron, Department of the Air Force, Tinker Air Force Base, OK, appearing for Department of the Air Force.

PARKER, Board Judge.

Eddie D. West has asked the Board to review the Department of the Air Force's calculation of the Relocation Income Tax Allowance (RITA) applicable to his 2005 transfer from Cannon Air Force Base, New Mexico, to Tinker Air Force Base, Oklahoma. By Mr. West's own calculation of the amount of taxes he paid on the relocation benefits provided by the Air Force, he owes the Government \$75.32, rather than the \$261.57 overpayment calculated by the Air Force.

Statute and regulation require agencies to pay various relocation benefits and allowances to employees who are transferred in the interest of the Government, and permit agencies to pay other benefits and allowances. *See* 5 U.S.C. ch. 57, subch. II (2000); 41 CFR ch. 302 (2005). These payments are, for the most part, considered taxable income to the recipients. Our predecessor board for these claims, the General Services Administration Board of Contract Appeals, discussed in some detail the provisions of law, 5 U.S.C. § 5724b and 41 CFR pt. 302-17, which require agencies to pay employees additional money to effectively compensate them for the taxes they incur consequent to their receipt of these benefits and allowances. *Robert J. Dusek*, GSBICA 14325-RELO, 98-1 BCA ¶ 29,440 (1997).

The regulation establishes a two-step process for accomplishing this goal. In the year in which the agency pays the employee relocation benefits and allowances (year 1), it also pays a withholding tax allowance (WTA), which is intended to substantially cover the increase in the employee's federal income tax withholding liability that results from receipt of the benefits and allowances. 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 tax bracket. *Id.* 302-17.7(c). In the following year (year 2), the agency calculates a relocation income tax allowance, which makes further adjustments in payment, to reimburse the employee for any added tax liability that was not reimbursed by payment of the WTA, or to cause the employee to repay any excessive amount of WTA, based on the employee's actual tax situation for the year in which the relocation benefits and allowances were received. *Id.* 302-17.5(f)(2), (m), -17.8; *Paula M. Stead*, GSBICA 16506-RELO, 05-1 BCA ¶ 32,874.

The procedures used for calculating the proper RITA were developed jointly by the General Services Administration and the Internal Revenue Service and can be found at 41 CFR 302-17.8. The formulas are designed to carry out the statutory requirement to reimburse employees for "substantially all" of the taxes they incur for reimbursed moving expenses. 5 U.S.C. § 5724b. They are not designed to reimburse precisely the amount of an employee's added tax liability due to moving expense reimbursements, and neither the Department of the Air Force nor this Board is permitted to ignore them. *Curtis J. Lypek*, GSBICA 15931-RELO, 03-1 BCA ¶ 32,085 (2002).

Mr. West has not alleged that the Air Force misapplied the required regulatory formulas for determining the RITA, and our review of the Air Force's calculations shows that the formulas were correctly applied. The calculations that Mr. West would have us apply are not the ones required by the regulations. Accordingly, the claim must be denied.

ROBERT W. PARKER
Board Judge