



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 12, 2009

CBCA 1709-RELO

In the Matter of JAMES V. CAMILLOCCI

James V. Camillocci, Converse, TX, Claimant.

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

DANIELS, Board Judge (Chairman).

James V. Camillocci challenges the Department of the Army's determination that he owes the agency \$1708.58 in relocation income tax (RIT) allowance in 2009. We find that the agency has properly calculated the amount of the RIT allowance in accordance with the prescribed formula.

Background

The Army transferred Mr. Camillocci to Fort Sam Houston, Texas, in 2008. It found that he was entitled to \$7688.60 in relocation benefits -- \$6389.60 in temporary quarters subsistence expenses, \$1000 as a miscellaneous expense allowance, and \$299 in reimbursement of a real estate transaction expense.

Before paying these benefits to Mr. Camillocci, the Army made adjustments to the total. It added a withholding tax allowance (WTA) and subtracted amounts withheld for three taxes -- federal income tax, Social Security, and Medicare. The federal income tax withheld was identical in amount to the WTA, \$2562.87. The agency reported to the Internal Revenue Service as the employee's compensation in 2008 the amount of the benefits plus the WTA.

In 2009, the Army determined that Mr. Camillocci owes it in RIT allowance the sum of \$1708.58. The agency did not explain to him why he owed the money, however. After the employee filed this case with the Board, we demanded and received an explanation.

Discussion

Relocation benefits for employees who are transferred by their agencies from one permanent duty station to another are generally considered taxable income to their recipients. To cover the increased 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 called a RIT allowance. 41 CFR 302-17.1 (2007).

Our predecessor in settling claims by federal civilian employees regarding expenses incurred consequent to transfers of duty stations, the General Services Board of Contract Appeals, explained this abstruse corner of the law governing relocation benefits in *Marsha K. Schmitt*, GSBICA 16828-RELO, 06-2 BCA ¶ 33,331:

The procedures for calculating the RIT allowance are established in regulations issued by the Administrator of General Services (the head of the General Services Administration (GSA)), in consultation with the Secretary of the Treasury (who supervises the Internal Revenue Service (IRS)). 5 U.S.C. § 5738(b); *see* 41 CFR pt. 302-17. The procedures “are based on certain assumptions jointly developed by GSA and IRS, and tax tables developed by IRS.” 41 CFR 302-17.8(b)(1). According to the regulations, “This approach avoids a potentially controversial and administratively burdensome procedure requiring the employee to furnish extensive documentation, such as certified copies of actual tax returns and reconstructed returns, in support of a claim for a RIT allowance payment.” *Id.* The regulations further state, “The prescribed procedures, which yield an estimate of an employee’s additional tax liability due to moving expense reimbursements, are to be used uniformly. They are not to be adjusted to accommodate an employee’s unique circumstance which may differ from the assumed circumstances.” *Id.* 302-17.8(b)(2). *See generally* *Jason K. Peterson*, GSBICA 16820-RELO (Apr. 19, 2006); *Robert D. Baracker*, GSBICA 16781-RELO (Mar. 15, 2006); *W. Don Wynegar*, GSBICA 15602-RELO, 01-2 BCA ¶ 31,563; *Robert J. Dusek*, GSBICA 14325-RELO, 98-1 BCA ¶ 29,440 (1997).

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. *See generally 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.

Calculating the WTA is a relatively simple matter; the WTA is equal to 0.3889 times the taxable relocation benefits paid by the agency to the employee in the year of the move. 41 CFR 302-17.7(d). . . .

Calculating the RIT is more involved. Factors which must be known in order to make this calculation are the employee's federal, state, and local marginal tax rates for the year in which the move occurs, the employee's federal marginal tax rate for the following year, the WTA, and the amount of taxable relocation benefits. The calculations involving these factors are specified at 41 CFR 302-17.8(f).

Here, in justifying its demand for repayment, the Army has applied the formula mandated by the regulation. It has used ten percent as Mr. Camillocci's combined marginal tax rate for federal, state, and local income taxes in each of 2008 and 2009. The employee does not object that this rate is inappropriate. The figure is low because the employee resides in a state, Texas, which does not have an income tax. When the ten percent combined marginal tax rate for each year, the taxable relocation benefits in 2008 (\$7688.60), and the WTA for 2008 (\$2562.87) are appropriately inserted into the formula, the resulting RIT allowance is \$1708.58 due from Mr. Camillocci to the Army.

The agency did make an error in its calculations, and that error benefits the employee at the moment. The WTA for 2008, the year of Mr. Camillocci's move, should have been \$2990.10 (\$7688.60 times 0.3889), not \$2562.87. If the larger WTA had been paid in 2008, however, Mr. Camillocci would have owed more taxes in 2008 and his RIT allowance calculation for 2009 would have resulted in a larger amount due from him to the Army. This error has no impact on the calculation of the RIT allowance, however, because that

calculation is based in part on the WTA which was actually paid in 2008, not the WTA which should have been paid.

Decision

The agency's determination is affirmed. Mr. Camillocci owes the Army \$1708.58 as a result of the calculation of the RIT allowance for 2009.

STEPHEN M. DANIELS
Board Judge