UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 19, 2018

CBCA 6223-RELO

In the Matter of MICHAEL A. HARRIS

Michael A. Harris, Eagle River, AK, Claimant.

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

LESTER, Board Judge.

Claimant, Michael A. Harris, challenges a demand from the Finance Center, United States Army Corps of Engineers (USACE Finance Center), that he return an overpayment by the agency of income taxes associated with his relocation income tax allowance (RITA). As defined in the Federal Travel Regulation (FTR), RITA is a "payment to the employee to cover the difference between the withholding tax allowance (WTA), if any, and the actual tax liability incurred by the employee as a result of their taxable relocation benefits" and "is paid whenever the actual tax liability exceeds the WTA." 41 CFR 302-17.1 (2017). Because the tax rate applied to calculate the WTA that the agency paid for Mr. Harris exceeded the marginal tax rate subsequently applied to Mr. Harris's relocation benefits, the agency is entitled to a refund of the WTA overpayment. As discussed below, we deny the claim.

Background

In October 2017, Mr. Harris, as part of a permanent change of station (PCS), relocated from his permanent duty station (PDS) in Seattle, Washington, to a new PDS in Alaska. In the official travel authorization effectuating that transfer, his agency authorized Mr. Harris to receive various relocation benefits, including, among other things, nontemporary household goods storage expenses, temporary quarters subsistence expenses, round-trip

travel for house hunting, privately-owned vehicle transport, and real estate expenses. The travel orders also authorized RITA.

In 2017, Mr. Harris received a total of $11,476.94 in taxable relocation benefits. Applying a 25% flat rate to that figure, as required by 41 CFR 302-17.61(b)(2), and inserting it into a formula set forth at 41 CFR 302-17.24(b) for calculating WTAs, the USACE Finance Center provided Mr. Harris with a WTA of $3825.64, in addition to and beyond the $11,476.94 in 2017 relocation benefits. The agency paid the $11,476.94 in travel relocation benefits directly to Mr. Harris, but withheld the $3825.64 WTA, identifying it as an income tax withholding on a 2017 W-2 form for Mr. Harris and paying it to the Internal Revenue Service (IRS) on Mr. Harris's behalf.

In the first part of 2018, Mr. Harris and his wife filed a joint tax return with the Federal Government that resulted in their payment of taxes at a lesser tax rate. On June 5, 2018, Mr. Harris submitted his RITA certification form to the agency, indicating that he and his wife had paid income taxes on his relocation benefits at a tax rate less than 25%.

Subsequently, on July 3, 2018, the USACE Finance Center, after applying Mr. Harris's actual 2017 tax rate to the formula that it had used for calculating his WTA, notified Mr. Harris in response to his RITA certification that he would need to return $201.34 to account for the agency's overpayment of WTA. Mr. Harris challenged the agency's assessment, arguing that the agency was misapplying the FTR provisions relating to RITA and that, rather than needing to return some of the monies paid, he was actually entitled to an additional payment from the agency. The agency disagreed, and Mr. Harris submitted his challenge to the agency's demand to the Board.

Discussion

When a federal employee is relocated through a PCS from one PDS to another, he or she is typically provided certain relocation benefits by the employing agency, many of which are considered taxable income by the IRS and state and local taxing authorities. *See* 41 CFR 302-17.2 (discussing taxable nature of some relocation benefits). By statute, Congress has directed that, pursuant to regulations proscribed by the Administrator of General Services, agencies should reimburse relocated employees for "substantially all of the Federal, State, and local income taxes incurred . . . for any moving or storage expenses furnished in kind, or for which reimbursement or an allowance is provided." 5 U.S.C. § 5724b(a) (2012). The FTR implements that statutory direction through RITA, *see Ruth C. Rodriguez*, CBCA 5152-RELO, 16-1 BCA ¶ 36,276, at 176,929 (discussing RITA), an allowance that an agency may elect to implement through either a one-year or a two-year reimbursement process.

41 CFR 302-17.32. Because the agency here has adopted the two-year RITA process, we focus exclusively on the two-year process in this decision.

As the FTR makes clear, except when an employee declines any upfront WTA payment, the WTA is an integral part of the two-year RITA process. The WTA and RITA "are the two allowances through which the Government reimburses [employees] for substantially all of the income taxes that [they] incur as a result of [their] relocation[s]." 41 CFR 302-17.5. We have previously explained how the process is supposed to work:

> 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. The WTA is calculated at a flat rate based on a marginal tax rate of [25%],[1] regardless of the employee's tax bracket. 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.

Eddie D. West, CBCA 790-RELO, 07-2 BCA ¶ 33,662, at 166,689 (citations omitted); *see* 41 CFR 302-17.1, -17.23, -17.60, -17.62, -17.64, -17.66, -17.67.

Here, the agency has followed the regulatory process for the calculation and provision of RITA to the letter. In 2017, or "Year 1," the agency provided Mr. Harris with his relocation benefits and, using the 25% tax rate that the regulation mandates, calculated, withheld, and paid to the IRS Mr. Harris's WTA. In 2018, or "Year 2," the agency provided Mr. Harris with a W-2 form reflecting the taxable relocation benefits amount and the WTA

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[1] When the Board issued its decision in *Eddie D. West*, the FTR then in effect indicated that agencies should calculate the WTA based upon a 28% flat rate, *see* 41 CFR 302-17.7(c) (2007), and Mr. Harris applies the 28% rate to establish the amount that he believes he is entitled to be paid. For relocations that occurred in 2017, though, "[t]he correct rate is 25 percent," and section 302-17 of the FTR was amended effective January 1, 2015, to reflect the 25% flat rate for calculating the WTA. 79 Fed. Reg. 49640, 49642 (Aug. 21, 2014).

withheld. After receiving Mr. Harris's RITA claim and applying Mr. Harris's actual marginal tax rate, a tax rate less than the rate that the agency used to calculate Mr. Harris's WTA, the agency properly determined that it had overpaid Mr. Harris's income taxes on his relocation benefits through the WTA and properly sought to recover the $201.34 overpayment. Mr. Harris's argument that the agency's interpretation of the FTR is wrong and that "[e]verything is based on tax years, not the year [he] file[s] a RITA voucher" or the year in which the WTA is paid is incorrect. The FTR provisions clearly refer to Year 1 as the year in which the WTA is paid and Year 2 as the year in which the RITA claim is submitted and in which the agency recovers any Year 1 overpayment of income taxes.[2]

Decision

We deny Mr. Harris's claim. The agency may collect the $201.34 WTA overpayment from Mr. Harris.

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge

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[2] To the extent that Mr. Harris is concerned that his actual tax liability does not exactly match the amount that he recovers through the two-year RITA process, the Government's objective in the RITA process "is to reimburse transferred employees for *substantially* all (not exactly all . . .)" of the income taxes incurred as a result of relocation. 41 CFR 302-17.3 (emphasis added). The lack of an exact match provides no basis for complaint.