UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 4, 2019

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, has requested that we reconsider our decision dated October 19, 2018, by reframing the question that he says he had originally been trying to ask: whether the Finance Center of the United States Army Corps of Engineers (USACE Finance Center) used an incorrect percentage in calculating the tax adjustment in "Year 2" of Mr. Harris's relocation income tax allowance (RITA), which was the year (2018) in which Mr. Harris actually paid taxes on relocation expenses that the agency reimbursed in 2017. Familiarity with that October 19, 2018, decision is presumed.

In reviewing the materials that the parties originally submitted, it appeared that Mr. Harris did not contest the agency's assertion that his 2017 taxable earnings placed him in a 24% marginal tax bracket, but Mr. Harris has informed us that it was his intent, through his prior filing, to do so. On reconsideration, we grant Mr. Harris's claim and find that the proper tax adjustment calculation results in Mr. Harris receiving additional compensation.

Discussion

The purpose of part 302-17 of the Federal Travel Regulation (FTR) is to make a relocated employee whole for those reimbursable expenses that the employee incurs in relocating and for substantially all of the taxes that the employee pays thereon. 41 CFR Part

302-17 (2017); *see Carlos Garcia–Application of Relocation Income Tax Allowance*, 67 Comp. Gen. 135, 136-37 (1987) (the statute underlying the FTR provisions is intended to alleviate inequities and hardships that would result if relocations for the Government's benefit burdened employees with significant income tax liability). In this case, the agency attempted to achieve that goal using the two-year RITA process set forth at 41 CFR 302-17.60 to -17.69.

Through the two-year RITA process, the agency in "Year 1" reimburses the employee for relocation expenses incurred and adds a 25% markup (called a "withholding tax adjustment" (WTA)) to cover income taxes that the employee might have to pay on those reimbursements.[1] Then, in "Year 2," the agency substantially reimburses the employee for any additional taxes (beyond the 25% markup) that the employee actually had to pay on those reimbursements or, if the actual taxes paid were less than the 25% markup, to recover from the employee substantially all of the amount of the overpayment. Defining the amount of the "Year 2" reimbursement (or collection) amount involves comparing the 25% "Year 1" WTA payment amount with a refined calculation and adjustment in "Year 2," after the employee files his or her "Year 1" income tax returns, through which the agency identifies a marginal tax rate based upon the employee's actual total "Year 1" income.

In this case, Mr. Harris relocated with a report date of October 12, 2017. The agency paid and reimbursed Mr. Harris in 2017 for various relocation expenses, some of which constituted taxable income for 2017. Consistent with the FTR, the agency added a 25% WTA, in addition to the reimbursable expenses, to account roughly for taxes that Mr. Harris would have to pay on those taxable 2017 expense reimbursements. *See* 41 CFR 302-17.24. In 2018, Mr. Harris filed his tax return with the Internal Revenue Service (IRS), which established precisely how much in taxes he would pay on his 2017 relocation expense reimbursements based upon his and his wife's total 2017 income. To determine the "Year 2" RITA tax adjustment, which is supposed to account substantially for any difference between the 25% WTA paid in 2017 and the taxes that Mr. Harris actually paid in 2018 on that 2017 income, the FTR states as follows:

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[1] Since January 1, 2015, the FTR has provided that, to calculate the Year 1 WTA, the agency is to apply a "grossed-up withholding formula," set forth in the FTR, to each covered taxable relocation expense that the agency pays in Year 1 and insert into that formula the current "supplemental wages" rate from IRS Publication 15, Employer's Tax Guide. *See* 41 CFR 302-17.24(b). For 2017, section 7 of Publication 15 directs that employers "[w]ithhold a flat 25% (no other percentages allowed)" of the supplemental wages.

> Your agency finds the Federal marginal tax rate by comparing your taxable income, as shown in your "Statement of Income and Filing Status," to the Federal tax tables in the current year's Form 1040-ES instructions.

41 CFR 302-17.40(d). Because the statute that authorizes RITA requires the Government to pay "substantially all of the Federal, State, and local income taxes incurred by an employee, or an employee and such employee's spouse (if filing jointly) . . . for which reimbursement or an allowance is provided (but only to the extent of the expenses paid or incurred)," 5 U.S.C. § 5724b (2012), the reference to the "current year's Form-1060 instructions" has to be to those that actually applied to the calculation of Mr. Harris's 2017 income taxes, which, in this case, are found in Form 1040-ES (2017), 2017 Tax Rate Schedules, located at https://www.irs.gov/pub/irs-prior/f1040es--2017.pdf.[2] Those 2017 IRS tax schedules reveal, based upon Mr. Harris's 2017 income and filing status, a marginal rate of 28%, not the 24% utilized by the agency. The agency miscalculated RITA in "Year 2" when it applied a 24% rate to conclude that Mr. Harris was obligated to return $201.34 of his "Year 1" payment to the Government. Instead, applying the correct 28% rate, Mr. Harris was entitled to an extra payment beyond what he was paid in "Year 1."

Decision

Mr. Harris is entitled to return of the $201.34 payment that the agency demanded based upon its incorrect "Year 2" calculation. He is also entitled to payment of an additional $637.61, which reflects the proper calculation of his "Year 2" entitlement pursuant to 41 CFR 302-17.67.

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.
Board Judge

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[2] Both Mr. Harris and the USACE Finance Center cite to tax tables published in General Services Administration (GSA) FTR Bulletin 18-06 in discussing how to calculate the combined marginal tax rate (CMTR) in computing Mr. Harris's RITA under the two-year RITA process. The tax tables found in that bulletin apply only to relocations that occurred before January 1, 2015. *See* 41 CFR 302-17.8 (2014); 79 Fed. Reg. 49640, 49642 (Aug. 21, 2014). Because Mr. Harris relocated in 2017, those tables are inapplicable to Mr. Harris's RITA benefit.