



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 15, 2019

CBCA 6373-RELO

In the Matter of HEATHER E. McBRIDE

Heather E. McBride, Fairbanks, AK, Claimant.

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

SHERIDAN, Board Judge.

Claimant, Heather E. McBride, a contract management specialist employed by the United States Army Corps of Engineers (USACE) was issued permanent change of station (PCS) orders transferring her from Pyongtaek, South Korea to Eielson Air Force Base, Alaska. Ms McBride states that “there was no notice or guidance provided on the implications of new tax laws.” She argues that “I should be grandfathered in to the laws in place at the time of my original PCS from Alaska to South Korea in August 2013 as that is what [my] decision to relocate was based on.”

Background

Claimant was transferred to South Korea in August 2013; she returned to Alaska from South Korea in April 2018.

While claimant was in South Korea, the Tax Cuts and Jobs Act of 2017, Pub.L. 115–97 (TCJA), became effective on January 1, 2018. Regulatory guidance for this law was issued by the General Services Administration (GSA) in May 2018 and again in November 2018 in coordination with the Internal Revenue Service.

Prior to the passage of TCJA, certain travel and moving expenses were deductible from an employee's taxes. With the passage of TCJA, many of the tax deductions were eliminated. The TCJA suspended qualified moving expense deductions along with the exclusion for employer reimbursements and payments of moving expenses effective January 1, 2018, for tax years 2018 through 2025. Per GSA Bulletin Federal Travel Regulation (FTR) 18-05 (released on May 14, 2018), along with the current taxable travel, transportation, and relocation expenses under FTR, Chapter 302, the following reimbursements, direct payments, and indirect payments became taxable:

Lodging expenses for enroute travel to the new duty station

Mileage for using privately owned vehicle (POV) to travel to the new duty station

Transportation using common carrier (e.g., airline) to the new duty station

Shipment of household goods (HHG) to include unaccompanied air baggage and professional books, papers, and equipment

Temporary storage of HHG in transit within 30 calendar days after the day the items are removed from the old residence and before they are delivered to the new residence

Shipment of mobile home in lieu of HHG

Extended storage of HHG for assignments outside the Continental United States (OCONUS)

Transportation of POV – Continental United States (CONUS) and OCONUS

In processing the payments due claimant, USACE underwithheld \$344.67 in taxes. On November 27, 2018, claimant was informed that she owed a debt of \$344.67. According to the agency, this was claimant's share of the following taxes: FITW [federal income tax withholding] (\$255.74), FICA [Federal Insurance Contributions Act] (\$74.07), and Medicare (\$16.86) on the relocation benefits she received.¹

¹ Claimant does not address precisely which PCS entitlements she received or how much in taxes she was liable for as a result of the TCJA.

Discussion

Under the TCJA implementing regulation, Ms. McBride's PCS entitlements have different tax implications than when she originally went OCONUS to South Korea. These tax implications were unknown when she transferred to South Korea because the TCJA had not yet passed. The TCJA became effective on January 1, 2018, but USACE underwithheld \$344.67 in taxes when it made payments for claimant's PCS reimbursements.

Neither the TCJA nor the implementing regulations provide allowance for anyone already OCONUS to be "grandfathered" or exempted from the applicable taxes when returning from OCONUS. Federal agencies do not have the authority to waive the applicability of the TCJA. The Board has no authority to waive the agency's assessment of a debt which is based on proper application of the applicable law and travel regulations. The authority to waive an employee's debt belongs to the head of the agency from which the debt arose. *Bradley Hebing*, CBCA 5052-RELO, 17-1 BCA ¶ 36,615; *Andrea L. LeMay*, CBCA 4421-RELO, 15-1 BCA ¶ 35,946, at 175,674 (citing *RuthAnne S. Darling*, CBCA 1461-TRAV, 09-2 BCA ¶ 34,153; *Evan F. Meltzer*, CBCA 866-RELO, 07-2 BCA ¶ 33,708).

Decision

The claim is denied.

Patricia J. Sheridan

PATRICIA J. SHERIDAN

Board Judge