



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 12, 2007

CBCA 483-RELO

In the Matter of MICHAEL J. KEARNEY

Michael J. Kearney, San Antonio, TX, Claimant.

Major Kerry D. Britt, Commander, 12th Comptroller Squadron, Air Education and Training Command, Randolph Air Force Base, TX, appearing for Department of the Air Force.

HYATT, Board Judge.

Background

Claimant, Michael J. Kearney, a civilian employee of the Department of the Air Force, transferred from Crestview, Florida, to San Antonio, Texas, in August 2004. In connection with his transfer, which was in the interest of the Government, he was authorized relocation expenses, including real estate transaction benefits.

Mr. Kearney's claim is made because of the timing of the Air Force's payment of his voucher for the reimbursement of the allowable real estate transaction expenses incurred in selling his old residence in Florida and purchasing a home in San Antonio. Mr. Kearney submitted the paperwork for these expenses on October 13, 2004. He was not paid the amounts claimed until February of 2005.

Mr. Kearney maintains that under Department of Defense (DoD) and its own guidelines the Air Force should have reviewed and paid his voucher within thirty days after

submission to the agency for payment.¹ By causing him to receive this income in 2005, he contends that his tax brackets were adversely affected, with the result that the Air Force determined that his withholding tax allowance (WTA) was overpaid by the amount of \$3945, which he must repay. Although Mr. Kearney does not dispute the Air Force's calculations, he maintains that had he received all of this income in 2004, he would have "broken even" and would not have been required to return any of the WTA he received in connection with his transfer.

Discussion

In general, relocation benefits paid by the Government to transferred employees are considered taxable income to the recipients. To cover the increased tax liability resulting from receipt of the benefits, agencies are authorized to pay the employees an additional sum, called a relocation income tax (RIT) allowance. 5 U.S.C. § 5724b(a) (2000); 41 CFR 302-17.1 (2004). The implementing regulations establish a two-step process for determining an employee's RIT allowance. In the year in which the agency pays the relocation benefits, it pays a WTA, which is intended to be a rough estimate of the employee's increased income tax liability that results from the receipt of the benefits and the WTA itself. 41 CFR 302-17.5(e), (n). The WTA is calculated at a flat rate based on a marginal tax rate of twenty-eight percent, regardless of the employee's actual tax bracket. *Id.* 302-17.7(c). In the following year, the employee is required to provide specific tax information to permit the agency to calculate a RIT allowance, which more accurately reflects the employee's actual tax situation. When the agency determines that the employee's RIT allowance is greater than the amount of the WTA it paid, it will reimburse the employee for the difference. If the employee's RIT allowance is less than the amount of the WTA it paid, the agency will bill the employee for the excessive amount of WTA that was paid. 41 CFR 302-17.5(f)(2), (m), -17.7(e)(2), -17.8; *see, e.g., Troy T.R. Poitra*, GSBCA 16902-RELO, 06-2 BCA ¶ 33,365; *Marsha K. Schmitt*, GSBCA 16828-RELO, 06-2 BCA ¶ 33,331; *Paula M. Stead*, GSBCA 16506-RELO, 05-1 BCA ¶ 32,874.

In this case, Mr. Kearney does not dispute the agency's calculation of the RIT allowance. Instead, he asserts that had the agency reimbursed his real estate expenses within thirty days, in accordance with the guideline, he would have enjoyed a more favorable tax

¹ Claimant cites DoD Financial Management Regulation, Volume 9, Chapter 8, which provides, in certain circumstances, for the payment of interest and a late fee when settlement of a travel claim is delayed by more than thirty days. It appears that this is intended to compensate an employee who is penalized with a late fee or interest for failure to pay a credit card balance attributable to travel expenses.

impact. That is, had all of his moving expenses been reimbursed in 2004, rather than partly in 2004 and partly in 2005, his income in 2004 would have been taxed at the twenty-eight percent tax rate at which the WTA is calculated, and he would not have been required to refund any of the WTA that he received.

It is not unusual for reimbursements of relocation expenses to straddle one or more tax years. *See, e.g., Stephen Barber*, GSBCA 15825-RELO, 03-1 BCA ¶ 32,063 (2002). As we pointed out in *Barber*, it should not particularly matter what year the expenses are reimbursed in, so long as the formulas are properly applied. The intent of the two-step procedure is to ensure that the RIT allowance offsets the actual tax impact in the year that reimbursement of particular expenses were made. In 2005, when Mr. Kearney was reimbursed for his real estate transaction expenses, he did not pay taxes at the higher marginal rate used to calculate the WTA he received in conjunction with that payment. In short, the WTA that was provided, on a temporary basis, to offset the tax impact of the income received from reimbursement of real estate expenses, was more than the additional taxes that Mr. Kearney actually incurred as a result of the relocation expenses reimbursements. Since the employee did not pay all of the WTA amount in increased taxes, the regulations require that the excess amount be refunded to the Government once the actual tax impact is determined. On this record, we are not persuaded that Mr. Kearney is in fact substantially worse off as a result of the delayed payment.

Mr. Kearney's complaint that the Air Force failed to comply with its internal guidelines is not a matter for resolution by the Board. The Air Force has applied the applicable RIT regulations and formulas properly. The Board cannot waive the debt thus established nor can it grant any other relief. To the extent the Air Force is persuaded that Mr. Kearney suffered an adverse tax impact as a result of its failure to reimburse him in accordance with the time frame established in its regulations, and the head of the agency determines that collection of the debt "would be against equity and good conscience and not in the best interests of the United States," the Air Force has the authority to waive repayment of the debt. 5 U.S.C. § 5584(a); *Schmitt; Cindy L. Luciano*, GSBCA 16403-RELO, 04-2 BCA ¶ 32,715; *Barber*.

Decision

The claim is denied.

CATHERINE B. HYATT

Board Judge