

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 12, 2001

GSBCA 15307-RELO

In the Matter of PEGGY A. BYERS

Peggy A. Byers, Chaska, MN, Claimant.

J. Patrick O'Toole, Director, Division of Travel Management, Baltimore, MD,
appearing for Social Security Administration.

WILLIAMS, Board Judge.

Money paid by the Government to employees who are transferred from one permanent duty station to another, as reimbursement for relocation expenses, is generally taxable. As authorized by statute and regulation, agencies pay additional amounts to those employees to compensate them for "substantially all" of the additional tax liability they incur. 5 U.S.C. § 5724b (Supp. IV 1998); 41 CFR 302-11.1 (1999). The additional amounts, collectively called a relocation income tax (RIT) allowance, are paid in two stages. In the first year, the agency pays a withholding tax allowance (WTA), which is designed to provide a rough approximation of proper compensation. For the following year, the agency uses financial information specific to each affected employee to calculate much more closely the appropriate RIT allowance. The second year amount is either negative or positive, depending on whether the WTA was higher or lower than appropriate for the particular employee. Catherine S. Cunningham, GSBCA 15035-RELO, 00-1 BCA ¶ 30,807; Jeffrey P. Nielsen, GSBCA 15069-RELO, 00-1 BCA ¶ 30,746; Elizabeth Atkeson, GSBCA 15093-RELO, 00-1 BCA ¶ 30,656 (1999); Linda R. Drees, GSBCA 14436-RELO, 99-1 BCA ¶ 30,198 (1998); Robert J. Dusek, GSBCA 14325-RELO, 98-1 BCA ¶ 29,440 (1997).

The Social Security Administration (SSA) paid one of its employees, claimant Peggy A. Byers, a WTA in the year in which it transferred her from one location to another. In the following year, SSA calculated that Ms. Byers' RIT was less than the WTA that she had been paid, in the amount of \$967.26. The agency consequently believes that Ms. Byers must repay this amount.

SSA has requested the Board's opinion as to this matter. We find that the agency's determinations are correct.

Background

Claimant, a service representative with SSA, was transferred from LaCrosse, Wisconsin, to Edina, Minnesota, in July 1999. In calendar year 1999, SSA reimbursed Ms. Byers a total of \$11,152.77 in relocation expenses. SSA also paid Ms. Byers a WTA of \$3122.77. The WTA was based upon a Federal supplemental wages withholding rate of 28%, as specified in the Federal Travel Regulation (FTR), 41 CFR 302-11.7(c) (1999) (FTR 302-11.7(c)).

In February 2000, Ms. Byers provided the agency with the amount of her total earned income in 1999, and her Federal tax filing status as head of household, so that the agency could calculate her RIT. The agency, following the RIT computation procedures in FTR 302-11.8 and the tax year 1999 Federal Marginal Tax Rate Tables published in Appendix A to FTR 302-11, determined that claimant was in the 15% Federal tax bracket for 1999. See 41 CFR Pt. 302-11, App. A (2000). Because the WTA was based on a higher marginal rate than the RIT allowance, the amount of the WTA turned out to be greater than the amount of the RIT allowance; the calculations showed that Ms. Byers owed money to SSA. The agency asked her to refund the excess payment amount, \$967.26, in accordance with FTR 302-11.9(b)(3).

Ms. Byers was actually taxed in the 28% tax bracket in 1999. Had SSA computed claimant's RIT allowance by considering her to be in the 28% tax bracket instead of the 15% bracket, no excess payment amount would have been found.

Discussion

The issue before us is whether the agency properly computed Ms. Byers' RIT allowance by considering her to be in the 15% bracket, though her actual tax bracket was 28%. Claimant contends SSA should have ignored the FTR and looked instead to her actual tax rate. Unfortunately for claimant, the agency necessarily and properly followed the procedures set forth in FTR 302-11.8. That regulation specifies the "rules and procedures for determining the RIT allowance." The regulation expressly recognizes that "the procedures prescribed herein for calculating and payment of the RIT allowance are based on certain assumptions jointly developed by GSA [the General Services Administration] and IRS and tax tables developed by IRS." The regulation continues:

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.

Furthermore, the regulation recognizes expressly that the RIT calculation procedures are estimates, and prohibits the agency from adjusting these estimates to accommodate an employee's unique circumstances which differ from the assumed circumstances. FTR 302-11.8(b)(2) provides:

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 stated in paragraph (b)(1) of this section.

The agency correctly applied FTR 302-11.8(e)(1) in determining that the Federal Marginal Tax Rate for RIT computation purposes was 15%. The regulation states: "The Federal Marginal Tax Rates for Year 1 and Year 2 are determined by using the income level and filing status determined under paragraph (g) of this section and contained in the certified statement by the employee . . . on the RIT allowance claim, and applying the prescribed Federal Tax Tables contained in Appendices A and C of this part."

Ms. Byers certified her total earned income for 1999 and her Federal tax filing status as head of household. Based upon this information, using the 1999 Federal Marginal Tax Rate Table as published in Appendix A to Part 302-11, the agency correctly determined that Ms. Byers was in the 15% Federal tax bracket for tax year 1999. The agency did not have the discretion to ignore the procedure set forth in the regulation even though it differed from the tax liability actually incurred by Ms. Byers for that year. For ease of application, the regulation based its formula not on actual tax liability paid by any particular employee, but rather on assumptions and generalized procedures. Robert J. Dusek, GSBCA 14325-RELO, 98-1 BCA ¶ 29,440.

While it is unfortunate that the agency's assumptions differed from claimant's situation and caused claimant to receive less in the way of a RIT reimbursement, this Board cannot override agency regulation which has the force and effect of law. Catherine S. Cunningham, GSBCA 15035-RELO, 00-1 BCA ¶ 30,807; Murray Lumpkin, GSBCA 14513-TRAV, 98-2 BCA ¶ 30,042. As this Board recognized in Catherine S. Cunningham, "the purpose of the [RIT] regulations is to provide agencies with a bright-line, uniform, and reasonably straight-forward methodology for reimbursing employees for added taxes attributable to reimbursed moving expenses." 00-1 BCA at 152,098-99. Further, the direction in the regulation that employees be reimbursed for "substantially all" of the taxes incurred for reimbursed moving expenses does not mean that employees will be reimbursed for every dollar of tax liability incurred as a result of having relocation benefits. William A. Lewis, GSBCA 14367-RELO, 98-1 BCA ¶ 29,532.

Decision

The agency calculated Ms. Byers' RIT allowance in accordance with requirements specified in the FTR. It may recover the excess payment of \$967.26 from the employee.

MARY ELLEN COSTER WILLIAMS
Board Judge