

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

December 4, 2000

GSBCA 15375-TRAV

In the Matter of BRIAN J. FARLEY

Brian J. Farley, Madison, MS, Claimant.

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

BORWICK, Board Judge.

Claimant, Brian J. Farley, contests the methodology by which the Social Security Administration calculated his income tax reimbursement allowance (ITRA) for 1998 and 1999. We sustain the decision of the agency because it correctly applied the Federal Travel Regulation (FTR) and the FTR does not conflict with applicable statute.

Claimant was, and continues to be, on a long-term assignment in Jackson, Mississippi. Claimant's travel reimbursement was subject to income tax since 1998 and he was eligible to file a claim for additional state, federal, and local income taxes he paid as a result of his travel reimbursement being treated as taxable income. The agency calculated claimant's ITRA for 1998 and 1999 using the fifteen percent marginal federal income tax rate for earned income and the five percent marginal state tax rate for earned income in tax tables published by the General Services Administration (GSA). These tax tables are found in the FTR, 41 CFR 302-11.8(e)(1), 302-11 apps. A-C (2000).

The agency concluded that it owed claimant a total ITRA payment of \$6071.04. The agency then added federal tax and state taxes of \$1699.89 and \$303.55, respectively, to the \$6071.04 figure. The \$1699.89 and \$303.55 represented payment for tax liability on ITRA payments themselves. The agency calculated those amounts based on a federal tax rate of twenty-eight percent and state tax rate of five percent. This resulted in a gross total of \$8074.48. The agency then subtracted Federal Insurance Contributions Act (FICA) taxes, resulting in a net total of \$7456.78 being owed to the claimant.

On May 30, 2000, the agency notified claimant that he would be paid \$7456.77. The one cent difference from the net total number in the paragraph immediately above is not explained in the record. On July 11, 2000, claimant filed a claim with this Board contesting

the agency's calculation. On August 1, after the agency realized that it had mistakenly withheld excessive FICA taxes, it corrected the amount it owed to \$7610.04.

Claimant's complaint is not that the Government incorrectly applied the tax tables in figuring his ITRA, but that the Government used them at all. Claimant argues that "the reimbursement I received is not an amount equal to all income taxes for which I was liable due to travel reimbursement." Claimant maintains that his actual federal income tax liability for 1998 was \$230.95 greater and for 1999 was \$1510.25 greater than the ITRA determined by the agency through use of the tax tables. Claimant argues that his allowable reimbursement is "short" by a total of \$1741.20, to which must be added \$487.54 for federal tax allowance and \$87.06 for State tax allowance (at twenty-eight percent and five percent respectively), for a total due of \$2315.80.

Claimant argues that the agency should reimburse him for an amount that "is actually equal to all income taxes for which he was liable," that the marginal tax tables "do not reflect the actual tax that was paid," and that use of marginal tax tables "does not follow the intent of the law."

Statute provides that under regulations prescribed under section 5707 of Title 5, U.S.C., agencies are authorized to use funds for the reimbursement of federal, state and local income taxes incurred by an employee (and the spouse if filing jointly) of the agency for "any travel or transportation reimbursement made to such an employee for which reimbursement or allowance is provided." 5 U.S.C. § 5706c(a) (Supp. IV 1998). The statute also provides that "reimbursement under this section shall include an amount equal to all income taxes for which the employee and spouse, as the case may be, would be liable due to the reimbursement for the taxes referred to in subsection (a)." 5 U.S.C. § 5706c(b).

Under the authority of 5 U.S.C. § 5707, the Administrator of General Services has promulgated the regulations for reimbursement of such taxes in the FTR, subpart 301-11.F. The FTR defines the ITRA as an allowance designed to reimburse federal, state and local taxes incurred incident to an extended temporary duty (TDY) assignment. 41 CFR 301-11.501. The agency determines federal, state and local tax rates by using the procedures and marginal tax tables established for the relocation income tax (RIT) allowance in 41 CFR 302-11.7, -11.8 and appendices A through D. 41 CFR 301-11.524(a).

Because the procedures and tax tables for determining the RIT allowance are made applicable to the calculation of the ITRA, we briefly examine the procedures prescribed for determining the RIT allowance. Under 41 CFR 302-11.8 the agency establishes a combined marginal tax rate for earned income using the federal and state tax tables in the applicable appendices. 41 CFR 302-11.8(e)(1),(2). The use of the tax tables (and the associated formulae) "avoids a potentially controversial and administratively burdensome procedure requiring the employee to furnish extensive documentation" to support an employee's claim. 41 CFR 302-11.8(b). The prescribed procedures "are not to be adjusted to accommodate an employee's unique circumstance which may differ from the assumed circumstances" mentioned in other subsections of the FTR. Id.

In Michael R. Planitz, GSBCA 15073-RELO, 00-1 BCA ¶ 30,751, we considered the same issue raised by claimant, in the context of reimbursement of the RIT allowance. We explained that, under the FTR, the allowance is designed to reimburse an employee for substantially all of the tax liability, but is not designed to reimburse the employee for the exact amount of the employee's tax liability. Id. The same is true of the ITRA. Nothing in 5 U.S.C. § 5706c(a), the statutory subsection authorizing the ITRA, requires agencies to reimburse employees for their exact tax bill on a dollar for dollar basis, and we do not consider the provisions of the FTR mandating reliance on marginal tax tables to be in conflict with the authorizing statute.

A separate provision, 5. U.S.C. § 5706c(b), authorizes agencies to reimburse employees for taxes in an amount "equal to" all income taxes on the ITRA. In figuring the tax on the ITRA allowance under the above statutory subsection, claimant and the agency use the same federal and state tax rates of twenty-eight and five percent, respectively. We understand, therefore, that claimant accepts the agency's methodology of calculating the tax on the ITRA allowance.

We deny the claim.

ANTHONY S. BORWICK
Board Judge