

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

August 12, 2002

GSBCA 15894-RELO

In the Matter of FLORENCE H. DOSH

Florence H. Dosh, Proctor, MN, Claimant.

Randal A. Overby, Comptroller, 148 Fighter Wing, Minnesota Air National Guard, Duluth, MN, appearing for Department of Defense.

BORWICK, Board Judge.

Claimant, Florence H. Dosh, an employee of the Department of the Air Force, by and through the Minnesota Air National Guard, challenges the methodology by which the agency calculated her Relocation Income Tax Allowance (RITA). We sustain the decision of the agency, since it acted correctly in calculating the RITA.

The RITA is designed to provide a transferred employee substantially enough money, in addition to relocation benefits, to pay all income taxes due on the benefits and the allowance itself. 5 U.S.C. § 5724b(a)(2000); 41 CFR 302-11.1 (2000); JTR C16001. The RITA consists of two parts, a withholding tax allowance (WTA), generally payable in the year in which the employee moves (year one), and a RITA generally payable in the following year (year two). Both the WTA and the RITA are calculated in strict conformance to formulas prescribed by regulation. The WTA roughly covers the employee's Federal income tax withholding liability on covered taxable reimbursements in year one. JTR 16002-D11. The RITA is calculated in year two and paid to cover substantially all of the estimated additional Federal, state and local income tax liability incurred as a result of the covered moving expense reimbursements received in year one. JTR C16002-C. See Patricia Russell, GSBCA 14758-RELO, 99-1 BCA ¶ 30,291.

Claimant relocated in the interest of the Government in year 2000. For that year, claimant received \$11,524.15 in relocation payments and \$4481.62 in withholding tax allowance (WTA) for a total of \$16,005.77.

For the year 2000, claimant had reported earned income (including the relocation reimbursements and WTA) at a level, which, according to the Joint Travel Regulations (JTR) Appendix R (the Federal Marginal Tax Rates By Earned Income Level and Filing Status),

put her marginal tax rate at fifteen percent for a married person filing jointly. Claimant's earned income level was such that the marginal tax rate if she were married but filing separately would have been twenty-eight percent for year one. Claimant, however, did not claim the status of married but filing separately on her federal income tax return; rather, she filed her federal income tax return jointly with her spouse. Claimant's spouse, however, reported no earned income for tax year 2000.

All facts related in the preceding paragraph are true for the year 2001 as well, except that if claimant had been married and filing separately in that year, her marginal tax rate would have been twenty-seven percent.

For both 2000 and 2001, under any set of circumstances, claimant's marginal tax rate for the state of Minnesota would have been, as it was, 7.25 percent. Claimant was not liable for local income tax payments in either 2000 or 2001.

When an employee claims the RITA, she is required to submit a certified statement on or attached to the RITA claim showing the earned income that was or will be reported on the Federal, state, and local income tax returns for the tax year in which the covered taxable reimbursements were received. JTR C16008-D (Sept. 1, 2000). The statement contains the following required certification:

I certify that the following information, that is to be used in calculating the RIT allowance to which I am entitled, has been (or will be) shown on the income tax returns filed (or to be filed) by me (or by my spouse and me) with the applicable Federal, State and local (specify which) tax authorities for the ____ tax year.

JTR C16010-A.

Claimant submitted her tax year 2000 RITA certification without her husband's signature. The certification identified the filing status as "married, filing jointly." On the certification, claimant accurately stated her wages shown on the Form W-2 for tax year 2000 and left blank the line for wages of her spouse shown on the Form W-2. Claimant's spouse did not sign the RITA certification. Claimant submitted a tax year 2001 RITA certification in the same manner, i.e., she stated her wages and stated no wages for her husband. Claimant's husband did not sign the certification. On the 2001 RITA certification, claimant maintained that the year one (2000) Federal marginal tax rate should be twenty-eight percent and the year two (2001) Federal marginal tax rate should be twenty-seven percent. These were the CMTRs applicable to married persons filing separately. JTR app. R (May 1, 2002).

Claimant received a WTA of \$4481.62. The agency calculated a combined marginal tax rate (CMTR) of slightly more than twenty-one percent for both year one and year two, using the fifteen percent Federal marginal tax rate, applicable to married persons filing jointly, and the Minnesota state tax rate of seven and one-quarter percent.

Claimant received taxable reimbursements of \$11,524.14. Using the Federal marginal tax rate of fifteen percent and the CMTR of twenty-one percent, and applying the gross-up formulas in the JTR, the agency correctly derived a year-two RITA of \$3093.45. The WTA

was \$4481.62. Application of the formulas resulted in the agency seeking a balance due of \$1388.17.

The JTR provide in pertinent part:

To determine the CMTRs needed to calculate the RIT allowance, an employee must determine the appropriate amount of earned income . . . that was or will be reported on the Federal income tax return for the tax year in which the covered taxable reimbursements were received (Year 1). This amount also must include the spouse's earned income if the "married filing jointly" filing status is claimed. . . . The earned income as determined under this paragraph and the tax filing status must be contained in a certified statement on, or attached to, the voucher claiming the RIT allowance. . . . If a joint filing status is claimed and the spouse's earned income is included, the spouse also must sign the certified statement. If the spouse does not sign the statement, earned income includes only the employee's earned income and the RIT allowance is calculated on the basis that the employee is [**married filing a separate return**] or [**a single tax payer**], except when an employee is allowed, under IRS [Internal Revenue Service] rules, to file a joint return as a surviving spouse.

JTR C16008-D.

Claimant maintains that since her husband did not sign the RITA certification, she is entitled to payment under the RIT formulas applying Federal marginal tax rates--twenty-eight percent for 2000 and twenty-seven percent for 2001--as if she were married but filing a separate return. JTR app. R (Tax Tables). Applying those marginal tax percentages to the prescribed formula in the JTR, claimant argues that she is owed \$7851.59.¹

Claimant maintains she is entitled to reimbursement of the RITA at the higher tax rate because of the last sentence in the above-quoted provision of the JTR. Claimant ignores the sentence that precedes it. That sentence says that the spouse is required to sign a certificate only when joint filing status is claimed and "the spouse's earned income is included."

We do not decide whether an employee may be entitled to claim the RIT allowance on the basis of "married filing a separate return" status when the certification includes the income of the spouse and the spouse chooses not to sign the certification, even though the regulation requires the spouse to sign it. That issue is for another case which involves

¹ Claimant misapplied the formula. In calculating the formula for year two, claimant mistakenly multiplied Y (the total WTA) by the formula's percentage numerator and then applied the percentage denominator instead of first deriving the formula's percentage and multiplying that percentage by the WTA. The result was a wildly overstated RITA claim, even accepting the higher marginal tax rates claimant maintains the agency should have used. Proper application of the formula using claimant's argued-for tax rates results in an alleged payment due to claimant of \$1233.98.

pertinent facts. In this case the provision does not apply to claimant because claimant included no earned income of her spouse on her certification or, for that matter, on her income tax returns. The agency properly decided claimant's RIT reimbursement. We deny the claim.

ANTHONY S. BORWICK
Board Judge