

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 18, 2004

GSBCA 16141-RELO

In the Matter of SAM M. KULUMANI

Sam M. Kulumani, Bensenville, IL, Claimant.

Terry Burton, Chief, Travel Section, Financial Services Center, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

HYATT, Board Judge.

Claimant, Sam Kulumani, disputes the calculation of his relocation income tax (RIT) allowance benefits paid in connection with his relocation in the interest of the Government. For the reasons stated, we find that the agency, the Department of Veterans Affairs (VA), properly applied the pertinent regulations.

Background

In August 2001, Mr. Kulumani effected a transfer within the Government, leaving a position with the Department of Housing and Urban Development in Chicago, Illinois, to accept a new position with the VA in Austin, Texas. He was offered various relocation benefits in conjunction with his transfer, including the RIT allowance.

Although Mr. Kulumani expected to receive additional benefits once his move was complete and the expenses reconciled, he instead received a bill from the Government in the amount of \$91.13, with the explanation that he had been overpaid for his withholding tax allowance (WTA). Mr. Kulumani has challenged the Government's claim, arguing that his RIT allowance benefits were improperly calculated.

Discussion

According to statute, agencies are required to reimburse employees for "substantially all" of the taxes they incur for reimbursed moving expenses. 5 U.S.C. § 5724b (2000). The Federal Travel Regulation (FTR) implements this statutory directive by establishing a procedure that agencies use to calculate a WTA in one year and a RIT allowance in a later

year. As a practical matter, the WTA serves as an estimate of the total allowance and the RIT allowance adds to or subtracts from it to create a refined net amount. In order to determine the amount of these allowances, agencies use formulas set out in the FTR, at 41 CFR ch. 302-11 (2001). See, e.g., Curtis J. Lypek, GSBCA 15931-RELO, 03-1 BCA ¶ 32,085; Stephen Barber, GSBCA 15825-RELO, 03-1 BCA ¶ 32,063.

It is not unusual to have a discrepancy between the WTA and net allowance amounts to which an employee is entitled. The WTA, paid in year one, is designed to cover only an employee's withholding tax obligation for federal income taxes on relocation benefits. Furthermore, the withholding tax rate for calculating a WTA is normally set at a flat twenty-eight percent. By contrast, the final RIT allowance adjustment, which is claimed and calculated in year two, i.e., the year following the year in which the individual received and paid taxes on the relocation benefits, covers state and local income taxes on those benefits as well. In addition, the combined marginal tax rates used to determine the RIT allowance are different from the flat twenty-eight percent tax rate used for the WTA and are based instead on personal certified tax information provided by the employee regarding year one. See Gail E. Williamson, GSBCA 15954-RELO, 03-2 BCA ¶ 32,327.

When the VA used the FTR's procedures to calculate Mr. Kulumani's RIT allowance, it determined that his WTA had overestimated the amount of his benefit. As a result, the VA sent Mr. Kulumani a bill for the excess WTA. Mr. Kulumani maintains that this is incorrect because the agency did not take into account his full income, but rather based the allowance paid on the income reported in block one of his Internal Revenue Service (IRS) Form W-2 [wage and tax statement] rather than the higher amounts reported in blocks three and five, which reflect additional income contributed to the employee's thrift savings plan. Mr. Kulumani contends that the definition of earned income in the FTR supports his position:

Earned income. For purposes of the RIT allowance, "earned income" shall include only the gross compensation (salary, wages, or other compensation such as reimbursement for moving expenses and the related WTA . . . and any RIT allowance . . . paid for moving expense reimbursement in a prior year) that is reported as income on IRS Form W-2 for the employee. . . .

41 CFR 302-11.5(h).

Mr. Kulumani's interpretation is not consonant with the clear intent of the statute as implemented in the FTR. The purpose of the RIT allowance is to offset, to a large degree, the extra taxes that employees are required to pay because they must declare certain relocation benefits as taxable income. The amount reported in block one reflects gross income subject to federal and state income taxes and reportable on the IRS Form 1040. Income taxes on wages contributed to the thrift savings plan are deferred, but the income is subject to employment taxes for purposes of social security and medicare benefits. The gross income on which the RIT allowance is calculated is the amount subject to income taxes in the tax year for which the benefit is paid, which is the amount reflected in block one on Form W-2, and reported to the IRS for purposes of determining taxes owed in a given tax year. See Linda R. Drees, GSBCA 14436-RELO, 99-1 BCA ¶ 30,198 (1998). Mr. Kulumani did

not pay or owe income taxes on the additional amount reflected in blocks three and five of the Form W-2 and he is not entitled to have these amounts included in the RIT allowance calculation. His RIT allowance was properly calculated using his taxable earned income as reflected in the first block of the Form W-2.

Claimant also questions why the state tax rate for Illinois was not used in the calculation since he moved back to Illinois in 2002 and paid taxes there. The agency explains that the Illinois tax rate was not used because the WTA was paid in Texas. Texas does not have a state tax on income. Finally, Mr. Kulumani objects that the inclusion of relocation benefits in his salary caused him to be ineligible for a \$1200 child care credit. He believes he should be compensated for this tax consequence as well. The regulations do not allow agencies to defray the "secondary effect" of the payment of moving expenses on such benefits as tax credits and tax deductions based on income level. Darrell E. Hutson, GSBCA 15050-RELO, 00-1 BCA ¶ 30,754.

Claimant has not shown that the VA miscalculated his RIT allowance. Accordingly, the claim is denied.

CATHERINE B. HYATT
Board Judge