

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

January 15, 2004

GSBCA 16307-RELO

In the Matter of BERNEDIA C. PERKINS

Bernedia C. Perkins, Marianna, FL, Claimant.

Jeanne DiGange, Authorized Certifying Officer, National Finance Center,
New Orleans, LA, appearing for United States Department of Agriculture.

PARKER, Board Judge.

Bernedia C. Perkins was surprised to receive from the Government a bill for \$2145.37, representing overpayment of a withholding tax allowance paid to her in connection with her transfer from one permanent duty station to another in 2002. Ms. Perkins questions "the method used to arrive at the amount of the indebtedness," and asks the Board to waive repayment of the debt.

As to the method used to arrive at the amount of the debt, we have previously explained that statute and regulation require agencies to pay various relocation benefits and allowances to employees who are transferred in the interest of the Government from one permanent duty station to another. See 5 U.S.C. §§ 5721-5739 (2000); 41 CFR ch. 302 (2002). These payments are, for the most part, considered taxable income to the recipients. We have discussed in some detail the provisions of law, 5 U.S.C. § 5724b and 41 CFR pt. 302-17, which require agencies to pay these employees additional money to effectively compensate them for the taxes they incur consequent to their receipt of these benefits and allowances. Robert J. Dusek, GSBCA 14325-RELO, 98-1 BCA ¶ 29,440 (1997).

The regulation establishes a two-step process for accomplishing this goal. In the year in which the agency pays the employee relocation benefits and allowances, it also pays a withholding tax allowance (WTA), which is intended to cover the increase in the employee's federal income tax withholding liability that results from receipt of the benefits and allowances. 41 CFR 302-17.5(e), (n), -17.7(a). The WTA is calculated at a flat rate based on a marginal tax rate of twenty-eight percent, regardless of the employee's tax bracket. Id. 302-17.7(c). In the following year, the agency calculates a relocation income tax (RIT) allowance, which makes further adjustments in payment, to reimburse the employee for any

added tax liability that was not reimbursed by payment of the WTA, or to cause the employee to repay any excessive amount of WTA, based on the employee's actual tax situation for the year in which the relocation benefits and allowances were received. Id. 302-17.5(f)(2), (m), -17.7(e), -17.9(b); Ronald Dawson, GSBCA 15924-RELO, 03-1 BCA ¶ 32,222. Ms. Perkins's RIT calculation resulted in an amount due because the amount of the WTA paid to her exceeded the amount payable based on her actual tax situation for the year in which the relocation benefits were received. This was appropriate. Ms. Perkins has not alleged any specific error by the agency in following the process called for in the applicable regulations.

The Board has no authority to waive the indebtedness. E.g., Stephen V. Yates, GSBCA 16236-RELO (Dec. 19, 2003); Stephen Barber, GSBCA 15825-RELO, 03-1 BCA ¶ 32,063 (2002). This authority is vested in the agency, which may waive repayment if it concludes that collection would be "against equity and good conscience and not in the best interests of the United States" and if there is no indication of "fraud, misrepresentation, fault, or lack of good faith" on the part of the person whose debt is requested to be waived. 5 U.S.C. § 5584(a)(2)(A).

ROBERT W. PARKER
Board Judge