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

October 14, 2005

GSBCA 16686-RELO

In the Matter of ROBERT J. BLANCHETTE

Robert J. Blanchette, Alamogordo, NM, Claimant.

TSgt. Christina Stewart, Chief, Customer Service, 49th Comptroller Squadron, Department of the Air Force, Holloman AFB, NM, appearing for Department of the Air Force.

PARKER, Board Judge.

Background

Robert Blanchette was transferred by the Department of the Air Force (Air Force) in 2002 from Lakehurst, New Jersey, to Holloman Air Force Base, New Mexico. In connection with the transfer, he received a withholding tax allowance (WTA) payment in the amount of $5181.32. In electing to receive the payment, Mr. Blanchette signed an Employee Agreement for WTA Payment that stated, in pertinent part:

I hereby agree to:

1. Repay any excess amount of WTA paid to me in any Year 1.

2. Submit the required certified tax information and claim for my RITA [relocation income tax allowance] within 120 days, unless an extension is granted by the commanding officer or designee of the DOD [Department of Defense] component concerned, after the close of Year 1.

> I also understand that failure to comply with this requirement will preclude the DOD components [sic] payment of the WTA. The entire WTA will be considered an excess payment if the RITA claim is not submitted in a timely manner to settle the RITA account.

Mr. Blanchette never filed a RITA claim, and the Air Force has demanded that he repay the WTA amount. Mr. Blanchette seeks relief from the demand for repayment on the ground that the Air Force did not remind him of his inadvertent failure to file a RITA claim until he received the notice of demand for payment in June 2005 -- about three years after his transfer. He maintains that his RITA claim would show that he is entitled to keep the entire WTA payment and receive additional funds. Mr. Blanchette acknowledges that he failed to file a timely RITA claim but maintains that DOD bears substantial responsibility in the matter.

Discussion

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. 57, subch. II (2000); 41 CFR 302 (2002). These payments are, for the most part, considered taxable income to the recipients. We have previously discussed in some detail the provisions of law, 5 U.S.C. § 5724b and 41 CFR 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 (year 1), it also pays a withholding tax allowance, 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 28%, regardless of the employee's tax bracket. *Id*. 302-17.7(c). In the following year (year 2), the agency calculates a relocation income tax 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), -17.8; *Paula M. Stead*, GSBCA 16506-RELO, 05-1 BCA ¶ 32,874.

We have held that failure to file a timely RITA claim can result in forfeiture of the WTA payment. *Gail E. Williamson*, GSBCA 15954-RELO, 03-02 BCA ¶ 32,327. The rule is based upon a provision in DOD's Joint Travel Regulations (JTR) in effect when Mr. Blanchette reported for duty:

> An employee must agree in writing to:
>
> a. repay any excess amount paid in Year 1 (see pars. C16008-F5 and C16009-B3), and
>
> b. submit the required certified tax information and claim for RIT allowance within 120 days after the close of Year 1, unless an extension is granted by the employee's commanding officer or designee.
>
> Failure of an employee to comply with this requirement precludes the WTA payment. The entire WTA is an excess payment if the RIT allowance claim is not submitted in a timely manner to settle the RIT allowance account.

JTR C16007-E. The Federal Travel Regulation was, and is, to the same effect. 41CFR 302-17.7(e)(2).

Mr. Blanchette entered into the agreement required by the JTR, but failed to file a RITA claim within the required time frame. The agreement, which was in accordance with applicable regulations, specifically informed Mr. Blanchette that, in the event he failed to file such a claim "in a timely manner," the entire WTA payment would be considered as an excess payment. Accordingly, although its action was severe, DOD was legally entitled to do what it did. We point out, however, that both the JTR and the agreement itself provide that an extension of time may be granted by the employee's commanding officer or designee. Under these circumstances, in which (1) the failure to file was inadvertent, (2) DOD gave no notice whatsoever that Mr. Blanchette's claim was overdue until he received a collection letter about three years after he was transferred, and (3) Mr. Blanchette, if granted such an extension, would clearly be entitled to keep some or all of the WTA payment, the agency should consider granting a retroactive extension to allow Mr. Blanchette to file his RITA claim. We find nothing in the applicable regulations which would preclude an extension being given even at this late date, if the agency so wishes.

_____

ROBERT W. PARKER
Board Judge