



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 5, 2011

CBCA 2053-RELO

In the Matter of GEORGE W. BITTORF

George W. Bittorf, Delta, PA, Claimant.

Anne Schmitt-Shoemaker, Finance Center, Army Corps of Engineers, Department of the Army, Millington, TN, appearing for Department of the Army.

POLLACK, Board Judge.

George W. Bittorf, claimant, made a relocation move from California to Maryland in 2008. As part of the reimbursement for the move, the Army Corps of Engineers (the Corps) paid, on claimant's behalf, \$4338.33 to cover the taxable income he gained during his permanent change of station move. The Corps has identified the specific checks paid. In arriving at the amount to be paid, the Corps calculated the income tax on the basis of a 25% rate.

As part of the relocation process, during the next year, claimant was required to file a relocation income tax (RIT) allowance voucher. His voucher was presented to the Corps. During the processing of that voucher, the Corps discovered that it had overpaid the withholding tax for Mr. Bittorf. The reason for the overpayment was that Mr. Bittorf's combined marginal tax rate for the year he received the relocation allowance was 19.0375%, which was significantly less than the 25% tax rate used by the Corps to make the earlier payment. Using Mr. Bittorf's actual tax rate, the Corps should have paid \$3060.34, but instead paid \$4338.33, thereby overpaying him by \$1277.99. The Corps cites FTR 302-17.9(b)(3) as the basis for its seeking reimbursement.

FTR 302-17.9, Responsibilities, addresses the process as to how an employee will be reimbursed for taxes that he/she will owe as a result of receiving relocation benefits. The regulation provides that the agency finance office will calculate the expected

withholding tax allowance (WTA) needed to cover the benefit in Year 1 (the year of the reimbursement) and provide that sum to the employee as part of the employee's relocation reimbursement. The sum for withholding is calculated by the agency as an estimate, without benefit of knowing the employee's actual tax rate for the year (Year 1). The actual tax rate, which is determined later, takes into account other deductions and a myriad of other factors, including overall income. Because the withholding used for Year 1 is an estimate, the regulation further requires that in the following year, Year 2, the employee must submit an RIT claim to the agency. The employee must submit the claim regardless of whether he is owed any additional reimbursement for the RIT allowance. If the claim shows that the employee has been overpaid, then the employee is obligated to pay the overpayment back to the Government. In this case, the Corps followed the procedures prescribed by the regulations. The Corps determined from the RIT claim submitted in Year 2 that Mr. Bittorf had been overpaid. Accordingly, Mr. Bittorf was held accountable for making a repayment of the excess sum.

In challenging the repayment, Mr. Bittorf essentially argues that because the Corps made what he calls a mistake (i.e. allowed more in the estimate than what was actually owed), his overpayment should not be his responsibility. He provides no evidence that the costs were not owed, nor does he assert that he was not given credit for the payments against his taxes. Put simply, he provides no logical argument which justifies his claim.

Discussion

The Corps used an estimated tax rate for WTA in Year 1. The tax rate on which this allowance was calculated was larger than Mr. Bittorf's actual rate and therefore, the Corps initially overpaid Mr. Bittorf's WTA. Mr. Bittorf got the benefit of that overpayment in taxes paid on his behalf. The Corps, following applicable regulations, has in Year 2 demanded the amount of the overpayment from Mr. Bittorf. In seeking the \$1277.99 in issue, all the Corps is doing is seeking to be reimbursed for an overpayment. Mr. Bittorf is not being asked to pay any more than he owes.

Decision

His claim for relief here is baseless. Accordingly, we deny the claim.

HOWARD A. POLLACK
Board Judge