UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 5 , 2016

CBCA 5056-TRAV

In the Matter of PATRICK T. WOZNIAK

Patrick T. Wozniak, Alexandria, VA, Claimant.

Richard Ourand, Office of General Counsel, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

O'ROURKE, Board Judge.

Claimant, Patrick T. Wozniak, a civilian employee of the Department of the Army, seeks the Board's review of the agency's calculation for payment of his Income Tax Reimbursement Allowance (ITRA). Claimant also seeks interest on the reimbursement due to alleged delays in processing the payment.

Background

Claimant traveled on official government business from May 2012 to August 2013 and incurred travel expenses for which he was reimbursed. Due to the extended nature of his temporary duty (TDY), claimant's travel allowances and benefits are treated as taxable income. The Income Tax Reimbursement Allowance (ITRA) is an allowance designed to reimburse the majority of all federal, state, and local income taxes incurred during an extended TDY assignment. The reimbursement process is complex; ITRA claims involve a multi-year, multi-step process that results in two separate payments to claimants. In this case, claimant requests the Board's review of his *second* ITRA payment.

Claimant filed his second ITRA claim on July 6, 2015 and submitted additional supporting documentation on July 10, 2015. The agency notified him on July 28, 2015 that his claim was being processed. The record indicates that claimant and the agency

communicated about the ITRA payment, and that claimant disagreed with agency's calculations. Although claimant had not yet been reimbursed, on August 31, 2015, he sought review of the agency's calculations by the General Services Administration (GSA), whose Federal Travel Regulation (FTR) governs ITRA claims.

In response to his request, a GSA representative sent an email message to claimant on September 21, 2015, stating that GSA had reviewed the information and agreed with the agency's computation of the payment. The message provided a general explanation of the procedures used to calculate ITRA payments and validated that these procedures were followed when the agency calculated his ITRA payment. The message also informed claimant that he could appeal to this Board if he disagreed with the agency's adjudication of his claim.

A month later, the agency sent an email message to claimant requesting confirmation that all administrative actions were complete so that final action could be taken on the claim. The message specifically inquired as to whether or not claimant intended "to appeal the GSA decision." Claimant responded on the same day, expressing uncertainty about the need to dispute the reimbursement since he had yet to receive the payment.

On November 3, 2015, claimant filed this appeal. Although the agency paid the claim on November 19, 2015, on February 4, 2016, claimant requested the Board's review of the agency's calculations to ensure they were correct. Claimant calculated the second ITRA payment to be $6309; the agency calculated it to be $5524, which is a difference of $785 and, for the purposes of this appeal, represents the disputed amount. Claimant also requested interest on his claim, alleging that the agency improperly withheld payment without notification.

Discussion

When a federal employee is on an extended TDY assignment at the same location, all benefit reimbursements for travel expenses paid to the employee are treated as taxable income. 41 CFR 301-11.602 (2013). Employees can be reimbursed for the additional taxes they incur due to extended TDYs by requesting an ITRA. 41 CFR 301-11.601; *Leland G. Newport*, CBCA 2291-RELO, 11-1 BCA ¶ 34,746.

In this case, claimant seeks reimbursement for taxes he incurred on the first ITRA payment, which is also treated as income and results in a second payment to cover those taxes. Relevant provisions for the purposes of analyzing the instant appeal include the following provisions from the 2013 FTR:

§301-11.636 Is the ITRA reimbursement considered to be income to the employee? Yes. The ITRA reimbursement is considered taxable income in the year paid and is subject to tax withholding as any other income.

§301-11.639 If the employee does not elect a lump sum payment, how is the tax on the ITRA reimbursement calculated? The tax on the tax reimbursement should be calculated using the Year 2 formulas developed for the relocation income tax allowance [RITA]. (See §302-17.8).

§302-17.13 How are taxes on extended TDY benefits and taxes on relocation allowances related? (a) Taxes on extended TDY benefits are computed using exactly the same processes described in this Part for the WTA [withholding tax allowance] and RITA . . .

§302-17.30 What is the purpose of the RITA? (a) The purpose of the RITA is to reimburse you for any taxes that you owe that were not adequately reimbursed by the WTA . . .The RITA . . . is based on your marginal tax rate, determined by your actual taxable income and filing status, which allows your agency to reimburse you for substantially all of your Federal income taxes. The RITA also reimburses you for any additional state and local taxes that you incur as a result of your relocation, because they are not reimbursed in the WTA process.

§302-17.60 How are the terms "Year 1" and "Year 2" used in the two-year RITA process? (a) Year 1 is the calendar year in which the agency reimburses you for a specific expense, provides an allowance, or pays a vendor directly. If your reimbursements, allowances, and/or direct payments to vendors occur in more than one calendar year, you will have more than one Year 1. (b) Year 2 is the calendar year in which you submit your RITA claim and your agency pays your RITA to you. (c) In most cases: (1) For every Year 1 you will have a corresponding Year 2; (2) Every Year 2 immediately follows a Year 1; and (3) Year 2 is the year in which you file a tax return reflecting your remaining tax liability for taxable reimbursement(s), allowance(s), and/or direct payments to vendors in each Year 1.

§302-17.66 How do I claim my RITA under the two-year process? (a) To claim your RITA under the two-year process, you must submit a voucher and attach the "Statement of Income and Tax Filing Status," as discussed in §§302-17.63–302-17.65. (b) Your voucher must claim a specific amount. However, your agency will calculate your actual RITA after you submit your RITA voucher and your "Statement of Income and Tax Filing Status;" the amount you claim on your voucher does not enter into that calculation. You should perform the RITA calculation for

yourself, as a check on your agency's calculation, but you are not required to put the "right answer" on the voucher you submit to claim your RITA.

§302-17.67 How does my agency calculate my RITA under the two-year process? (a) Your agency calculates your RITA after receipt of your RITA voucher. (b) Your RITA is itself taxable income to you. To account for taxes on the RITA, your agency will gross-up your RITA by applying the Combined Marginal Tax Rate (CMTR) to the final amount rather than the reimbursed amount. (c) Thus, your agency calculates your RITA by multiplying the CMTR (using the state and local tax tables most current at the time of the RITA calculation) by the total of all covered taxable relocation benefits during the applicable Year 1, and then subtracting your WTA(s), if any, from the same Year 1 from that total. That is:

$$RITA = \left(\left(\frac{C}{1-C} \right) \times R \right) - Z$$

Where: C = CMTR, R = Reimbursements, allowances, and direct payments to vendors covered by WTA during Year, and Z = Total grossed-up WTAs paid during Year 1.

§302-17.40 How does my agency calculate my CMTR? . . . The CMTR is, in essence, a combination of your Federal, state, and local tax rates. However, the CMTR cannot be calculated by merely adding the Federal, state, and local marginal tax rates together because of the deductibility of state and local income taxes from income on your Federal income tax return. The formula prescribed below for calculating the CMTR, therefore, is designed to adjust the state and local tax rates to compensate for their deductibility from income for Federal tax purposes. (c) The formula for calculating the CMTR is: CMTR = F + (1 – F) S + (1 – F) L; where: F = your Federal marginal tax rate, S = your state marginal tax rate, if any, L = your local marginal tax rate, if any.

Claimant opined that the agency used the wrong "R value," or reimbursement total, whereas the agency attributed the discrepancy to their use of different tax rates. Claimant used a 28% federal marginal tax rate instead of a 25% tax rate–which, according to the Federal and state marginal tax rates in effect in 2014,[1] would have been the correct tax rate for an individual with claimant's earned income. Both parties actually used the same "R value" of $13,322, as well as the same earned income amount. Based on the limited information contained in the record, we find

[1] The FTR directs claimants to use the Table most current at the time of the RITA calculation.

that the agency identified the correct values for the calculation.

To calculate the second payment, two formulas are required: the RITA formula and the CMTR formula. Claimant's Federal marginal tax rate was 25%, his state tax rate was 5.75%, and the local income tax rate for the purposes of this calculation was 0. Using the formula articulated above in 302-17.40, we find claimant's CMTR to be .2931 or 29.31%. To calculate the RITA, we use the formula illustrated in 302-17.67 above, where CMTR is divided by 1 minus the CMTR, and then multiplied by the total covered taxable relocation benefits ($13,322). This calculation yields an allowance of $5524. This is the same number that both the agency and GSA arrived at in their calculations.

Claimant also requested interest on his claim due to the agency's "improper withholding of payment without notice." This Board has long recognized the general rule against paying interest on claims against the United States in the absence of an express provision to the contrary in the relevant statute or contract. *Sabah A. Issa*, GSBCA 14140-TRAV-R, 98-2, BCA ¶ 29,761 (citing *Library of Congress v. Shaw*, 478 U.S. 310 (1986)). In cases, such as this one, where the FTR is the relevant regulation, the payment of a "late fee" is authorized on travel claims paid more than thirty days after the submission of a proper claim. 41 CFR 301-71.209. The agency contends that ITRA claims are not travel claims. This is not so. The cited section of the FTR exempts from the requirement to pay a late fee "claims for [certain] relocation allowances." An ITRA is paid to employees on extended temporary duty assignments. Although ITRA claims are computed "according to the federal regulation utilizing RITA procedures (41 CFR 301-11.628)," unlike RITA claims, they are not "relocation allowances." Therefore, unlike RITA claims, ITRA claims enjoy no exemption from the requirement for the payment of a late fee.

To calculate the late fee, the FTR instructs agencies to use the prevailing Prompt Payment Act interest rate or a flat fee of not less than the prompt payment amount based on an agency-wide average of travel claim payments. 41 CFR 301-71.210. Although the Prompt Payment Act prohibits the payment of interest on a claim when the amount is in dispute (31 U.S.C. § 3907(c) (2012)), this Prompt Payment Act provision does not apply to the FTR, and the FTR contains no parallel provision for suspending the assessment of fees when the amount is in dispute. On the contrary, the FTR informs employees that "the amount you claim on your voucher does not enter into that [RITA] calculation. You should perform the RITA calculation for yourself, as a check on your agency's calculation, but you are not required to put the 'right answer' on the voucher you submit to claim your RITA." 41 CFR 301-17.66. When claimant submitted his second ITRA claim in July

2015–as long as it was considered to be proper under the FTR–the agency was obligated to pay it within thirty days. The fact that claimant sought review of the agency's calculations did not excuse or exempt the agency from its obligation to pay the claim within thirty days.

The agency failed to pay the claim within thirty days of submission. Claimant submitted a proper travel claim on or about July 10, 2015, which was not paid until November 19, 2015. Claimant should be paid a late fee by the agency calculated in accordance with one of the two methods outlined in 41 CFR 301-71.210.

Decision

The Board finds that the agency correctly calculated the ITRA amount. The claim for the additional $785 is denied. We grant the late fee claim. The agency shall calculate and pay claimant the required late fee.

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KATHLEEN J. O'ROURKE
Board Judge