UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 22, 2024

CBCA 8108-RELO

In the Matter of JOHN P.

John P., Claimant.

Keith A. Mills, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

**NEWSOM**, Board Judge.

The claimant challenges the formula, set forth in the Federal Travel Regulation (FTR), for compensating employees for the tax liability occasioned by the payment of a relocation income tax allowance (RITA). 41 CFR 302-17.30–.33 (2023) (FTR 302-17.30–.33). The United States Army Corps of Engineers (USACE) denied the initial claim. We agree with USACE and deny the claim.

Discussion

Claimant, a USACE employee, relocated to a new duty station in 2022, and his employer provided relocation benefits. Some of those relocation benefits were taxable income. In accordance with the FTR, USACE calculated and paid the RITA to the claimant to compensate the claimant for income taxes due on his relocation benefits. *See* 41 CFR 302-17.30. The agency used the two-year method for calculating the RITA set forth at 41 CFR 302-17.60-.69. The RITA is, itself, taxable income. Therefore to account for the taxes that claimant would be obligated to pay on the RITA, the FTR provides a method for the agency to "gross-up" the RITA. The gross-up process is set forth in 41 CFR 302.17.67.

It is not disputed that USACE adhered to the FTR, calculating and paying to the claimant the grossed-up RITA in accordance with the formula in the FTR. The issue here

is whether the gross-up formula set forth in the FTR sufficiently compensates claimant for the taxes he had to pay on the RITA.

Claimant challenges the formula for calculating the RITA gross-up, contending that it is "inadequate" and inconsistent with the authorizing statute at 5 U.S.C. § 5724b(a) (2018). The statute provides that an agency must reimburse an employee for "substantially all" income taxes incurred on relocation benefits, to include "all" income taxes for which the individual would be liable due to the reimbursement for taxes.[1]

Through various computations, the claimant concludes that the 2023 RITA reimbursement was "off by $1,367.81" and suggests that his total reimbursement, to include 2024, was also too low. The claimant contends that, instead of grossing-up the RITA, the regulations should require the agency to pay the relocation income tax allowance *without* the gross-up in one year. Then, the next year, the regulations should require the agency to pay an *additional* RITA to cover the tax liability for the non-grossed-up RITA paid the year before. Using this alternative methodology, claimant states that he would have received an additional amount, which he computes in various ways. Employing claimant's alternative methodologies, claimant asserts that he would have been paid as much as $1,421.11 more.

This is an issue of first impression. We found no previous decision, either before this Board or our predecessors, considering the question of how the RITA gross-up is computed. Nevertheless, we are unpersuaded that the formula in the FTR is inconsistent with the statute.

Claimant did not present evidence showing that the gross-up was inadequate to compensate him for "all income taxes" triggered by his receipt of the RITA. He presents no evidence of his actual tax liability for the RITA. Rather, he instead compares the amount he received with the gross-up, and after deduction of employment taxes, with the amount he *might* have received *without* the gross-up and *without* deducting employment taxes. In reality, the claimant simply provided an alternative formula that would have netted him a higher payment without showing that a higher payment was warranted.

As we have previously explained, the procedures for calculating the RITA, including the gross-up, were developed jointly by the General Services Administration and the Internal

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[1] By statute, "funds . . . are available for the reimbursement of substantially all of the Federal, State, and local income taxes incurred by an individual . . . for any . . . relocation expenses . . . (but only to the extent of the expenses paid or incurred). *Reimbursements under this subsection shall also include an amount equal to all income taxes for which the individual . . . would be liable due to the reimbursement for the taxes*." 5 U.S.C. § 5724b(a) (emphasis added).

Revenue Service. *Eddie D. West*, CBCA 790-RELO, 07-2 BCA ¶ 33,662, at 166,689 (citing *Curtis J. Lypek*, GSBCA 15931-RELO, 03-1 BCA ¶ 32,085, at 158,610 (2002)). On the information presented, we have no basis to find that those procedures are inconsistent with the statute.

Finally, claimant asserts that it was improper for the agency to deduct, from his income tax allowance, the employment taxes that he was obligated to pay on his relocation benefits. This argument also is without merit. The express language of 5 U.S.C. § 5724b(a) provides an allowance for *income* taxes incurred. It does not provide for reimbursement "for employment-type taxes, such as those imposed by 26 U.S.C. § 21 (Federal Insurance Contributions Act) or Medicare taxes." *Anisa J.*, CBCA 6936-RELO, 21-1 BCA ¶ 37,877, at 183,924 (cleaned up). None of the authorities cited by claimant support a contrary result.

Conclusion

The claim is denied.

*Elizabeth W. Newsom*

ELIZABETH W. NEWSOM
Board Judge