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

February 28, 2001

GSBCA 15388-RELO

In the Matter of T. SCOTT FRICK

T. Scott Frick, Dallas, PA, Claimant.

Ray E. York, Chief, Travel System Division, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

NEILL, Board Judge.

Claimant, Mr. T. Scott Frick, asks that he be reimbursed for $2389.80 of federal employment taxes he paid as a result of his 1998 permanent change of station (PCS) move. The Department of Defense (DoD) has denied the claim. The Defense Finance and Accounting Service (DFAS), in passing this claim on to us at Mr. Frick's request, points out that, pursuant to DoD's Joint Travel Regulations (JTR) -- to which Mr. Frick is subject as a civilian employee of the Department -- reimbursement of federal, state and local income taxes incurred as a result of taxable reimbursements for PCS expenses expressly excludes reimbursement of employment taxes. For the reasons set out below, we affirm the agency's denial of Mr. Frick's claim.

Background

By orders issued on June 17, 1998, Mr. Frick was transferred from the office of the United States Army Corps of Engineers in Wilkes-Barre, Pennsylvania, to the Corps' office in Altoona, Pennsylvania. The orders authorized Mr. Frick to receive reimbursement for various expenses incurred in connection with his transfer. When he later claimed these reimbursements, he was not only paid for the costs incurred but, because some of these reimbursements are considered by the Internal Revenue Service (IRS) to represent additional income, Mr. Frick was also given a withholding tax allowance (WTA). Pursuant to regulation, this allowance is intended to cover the estimated income taxes due on the relocation benefits a transferred employee receives as a result of a PCS move. Although awarded to the employee, the WTA is, of course, withheld for tax purposes rather than actually paid to the employee. In addition to the WTA allowance, Mr. Frick was also awarded an additional relocation income tax (RIT) allowance when it was subsequently determined that the WTA previously awarded fell slightly short of that to which he was ultimately found to be entitled.

The claimant's quarrel with his agency is not in the calculation of the WTA or the RIT allowance but in the fact that, from these allowances as well as from the other benefits treated as income by the IRS, the agency withheld FICA (Federal Insurance Contributions Act) and Medicare employment taxes. He contends that this is in violation of section 5724b of Title 5 of the United States Code, which provides that employees should be reimbursed for "substantially all" of the federal, state, and local income taxes incurred for any moving or storage expenses furnished in kind, or for which reimbursement or an allowance is provided by statute. For this reason he believes that any liability for FICA and Medicare taxes assessed on his relocation benefits should be borne not by himself but by DoD. Accordingly, he asks that the $2389.80 withheld for federal employment taxes be returned to him.

Discussion

We have previously described in detail the statutory and regulatory framework applicable to the computation and payment of allowances to relocated employees to offset increased taxes incurred as a result of the reimbursement of certain moving expenses. See, e.g., William A. Lewis, GSBCA 14367-RELO, 98-1 BCA ¶ 29,532; Robert J. Dusek, GSBCA 14325-RELO, 98-1 BCA ¶ 29,440 (1997). We see no need to describe that complex process again in this decision. Suffice it to say that the authority for providing these benefits rests on the very statute cited to us by Mr. Frick. The language of the statute deserves close scrutiny. It provides, in part, that funds may be expended:

> for the reimbursement of substantially all of the Federal, State, and local *income taxes* incurred by an employee . . . for any moving or storage expenses furnished in kind, or for which reimbursement or an allowance is provided (but only to the extent of the expenses paid or incurred).

5 U.S.C. § 5724b(a) (1994 & Supp. IV 1998) (emphasis added).

Mr Frick reads the term "income taxes," as it appears in this statute, to mean every tax on income. This is incorrect. The reference is to income tax as that term is traditionally used in tax law. While employment taxes may be reckoned on the basis of a taxpayer's income, they are clearly distinct from income taxes and rest on a different statutory basis. The basis for federal income tax is today found in chapter one of the Internal Revenue Code. 26 U.S.C. §§ 1-1564 (1994 & Supp. IV 1998). On the other hand, the FICA tax, sometimes referred to as the Social Security tax, is based instead upon the Federal Insurance Contributions Act. A portion of this tax pays for an individual's Medicare coverage as well. According to the Internal Revenue Code, however, FICA taxes are considered employment taxes and are dealt with separately in chapter twenty-one of the Code. Id. §§ 3101-3128 (1994 & Supp. IV 1998).

Further, it is clear from an examination of the provisions on RIT allowances in the Government's primary regulation on travel, the Federal Travel Regulation (FTR), that these regulations most definitely deal only with income tax and not employment taxes such as FICA. Indeed, the part of the FTR covering RIT allowances reflects the statutory provision when its states:

> Payment of a relocation income tax allowance is authorized to reimburse eligible transferred employees for substantially all of the additional Federal, State, and local income taxes incurred by the employee . . . as a result of certain travel and transportation expenses and relocation allowances which are furnished . . . by the Government.

41 CFR 302-11.1 (1998) (FTR 302-11.1). A similar provision appears in JTR C16001. Indeed, as it currently reads, this section of the JTR explicitly states what is implicit in the FTR and the authorizing statute. This section of the JTR reads: "The RIT allowance does not include reimbursement for ***employment*** type taxes (e.g., FICA and FUTA [Federal Unemployment Tax Act] taxes)." As noted above, DFAS concurs in the agency's denial of Mr. Frick's claim based on this provision in the current version of the JTR. Mr. Frick, in reply, has observed that this provision in the JTR is of recent origin and did not appear in the version of the JTR in effect at the time of his transfer. We find no merit in this argument. Even if the provision is of recent origin, it does not represent any substantive change, but rather, simply makes explicit what has always been clear from both statute and implementing regulations.

Accordingly, we affirm the agency's denial of Mr. Frick's claim.

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EDWIN B. NEILL
Board Judge