

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

June 8, 2006

GSBCA 16828-RELO

In the Matter of MARSHA K. SCHMITT

Marsha K. Schmitt, Seminole, FL, Claimant.

JoAnne Rountree, Supervisor, Travel Section, Financial Services Center, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

DANIELS, Board Judge (Chairman).

The Department of Veterans Affairs (VA) transferred Marsha K. Schmitt from Pennsylvania to Florida in September 2004. Ms. Schmitt reports that the move did not go well and cost much more money than she anticipated. A year later, Ms. Schmitt's displeasure with the impact of the move was intensified when the VA sent her a bill of collection demanding repayment of \$2599.39. The VA says that this is the net relocation income tax (RIT) allowance she owes. It has refused to waive repayment of the amount, which it perceives as a debt. Ms. Schmitt has asked the Board to determine whether the amount claimed by the VA is valid and to reconsider the agency's determination not to waive the debt.

Calculation of the RIT allowance is an abstruse corner of the law governing relocation benefits for employees who are transferred by their agencies from one permanent duty station to another. The benefits are generally considered taxable income to their recipients. To cover the increased tax liability resulting from receipt of the benefits, Congress has authorized agencies to pay an additional sum to transferred employees. 5 U.S.C. § 5724b(a) (2000). This additional sum is called a RIT allowance. 41 CFR 302-17.1 (2004).

The procedures for calculating the RIT allowance are established in regulations issued by the Administrator of General Services (the head of the General Services Administration (GSA)), in consultation with the Secretary of the Treasury (who supervises the Internal Revenue Service (IRS)). 5 U.S.C. § 5738(b); *see* 41 CFR pt. 302-17. The procedures “are based on certain assumptions jointly developed by GSA and IRS, and tax tables developed by IRS.” 41 CFR 302-17.8(b)(1). According to the regulations, “This approach avoids a potentially controversial and administratively burdensome procedure requiring the employee to furnish extensive documentation, such as certified copies of actual tax returns and reconstructed returns, in support of a claim for a RIT allowance payment.” *Id.* The regulations further state, “The prescribed procedures, which yield an estimate of an employee’s additional tax liability due to moving expense reimbursements, are to be used uniformly. They are not to be adjusted to accommodate an employee’s unique circumstance which may differ from the assumed circumstances.” *Id.* 302-17.8(b)(2). *See generally* Jason K. Peterson, GSBCA 16820-RELO (Apr. 19, 2006); Robert D. Baracker, GSBCA 16781-RELO (Mar. 15, 2006); W. Don Wynegar, GSBCA 15602-RELO, 01-2 BCA ¶ 31,563; Robert J. Dusek, GSBCA 14325-RELO, 98-1 BCA ¶ 29,440 (1997).

The regulation establishes a two-step process for determining an employee’s RIT allowance. In the year in which the agency pays the employee relocation benefits (“Year 1”), it also pays a withholding tax allowance (WTA), which is intended to be a rough approximation of the employee’s increased income tax liability that results from receipt of the benefits and the WTA. 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 actual tax bracket. *Id.* 302-17.7(c). For the following year (“Year 2”), the agency calculates a RIT allowance which is more appropriately crafted to the employee’s tax situation. This second step, determination of the RIT allowance itself, either reimburses the employee for any added tax liability that was not reimbursed by payment of the WTA or causes the employee to repay any excessive amount of WTA. *Id.* 302-17.5(f)(2), (m), -17.8. *See generally* Paula M. Stead, GSBCA 16506-RELO, 05-1 BCA ¶ 32,874; Philippe J. Minard, GSBCA 15632-RELO, 01-2 BCA ¶ 31,631; William A. Lewis, GSBCA 14367-RELO, 98-1 BCA ¶ 29,532.

Calculating the WTA is a relatively simple matter; the WTA is equal to 0.3889 times the taxable relocation benefits paid by the agency to the employee in the year of the move. 41 CFR 302-17.7(d). The VA reports that Ms. Schmitt’s taxable relocation benefits in 2004 were \$16,574.13. Consequently, it should have paid her \$6445.68 in WTA. The agency instead paid her \$5524.72. It underpaid her \$920.96 in WTA in 2004.

Calculating the RIT is more involved. Factors which must be known in order to make this calculation are the employee’s federal, state, and local marginal tax rates for the year in which the move occurs, the employee’s federal marginal tax rate for the following year, the

WTA, and the amount of taxable relocation benefits. The calculations involving these factors are specified at 41 CFR 302-17.8(f). The VA calculated, using the formulas prescribed in the FTR, that Ms. Schmitt is due a total of \$2925.33 to cover the increased income taxes she had to pay as a result of receiving taxable relocation benefits. Because this amount is \$2599.39 more than the WTA it paid her in 2004, the agency claims that the employee must repay that sum.

The VA's determinations as to the RIT allowance are based on the assumptions that Ms. Schmitt's federal marginal tax rates for 2004 and 2005 were each 15%, and that she was required to pay no state or local income taxes in 2004. If these assumptions are correct, the agency's calculations are almost right: the net amount due Ms. Schmitt is \$2925.85, which is \$2599.87 more than the WTA she received in 2004, so she owes the agency the latter amount.¹ The reason that the net amount due to Ms. Schmitt is so much lower than the WTA she was paid is that the WTA calculation is based on the theory that the employee is in the 28% tax bracket, but Ms. Schmitt was actually in a lower bracket – only 15% for federal income taxes and zero for Florida income taxes. *Cf. Patricia Russell*, GSBCA 14758-RELO, 99-1 BCA ¶ 30,291 (involving resident of another state – Texas – which imposed no taxes on income).

Our record does not contain enough information to know whether the VA's assumptions are correct, however. It does establish the amount of the WTA and the employee's federal marginal tax rate for 2004, and Ms. Schmitt has not taken exception to the number put forward by the agency as the amount of taxable relocation benefits. The record does not provide any basis for concluding that the employee's federal marginal tax rate for 2005, or her state and local marginal tax rates for 2004, are the ones assumed by the VA, though. We cannot be certain that Ms. Schmitt's federal marginal tax rate for 2005 was actually 15% because we do not know her taxable earned income for that year. The RIT allowance was determined in the summer of 2005, when the total earned income for Ms. Schmitt and her husband for the year was still unknown. We cannot be certain that Ms. Schmitt's state and local marginal tax rates for 2004 were actually zero because this rate was applicable only to income taxed by the State of Florida. Ms. Schmitt lived in Pennsylvania as well as Florida during 2004, and the marginal tax rate for Pennsylvania for that year (at least for the purpose of calculating RIT allowances) was 3.07%. *See* 41 CFR pt. 302-17 app. B (2005). If Pennsylvania imposed an income tax on any portion of the relocation

¹ The fact that the VA paid Ms. Schmitt \$920.96 less than it should have in WTA becomes irrelevant, because if the agency had paid the properly-calculated amount in 2004, the employee's debt would have been correspondingly higher in 2005.

benefits Ms. Schmitt received, her state marginal tax rate for 2004 would have been greater than zero.

We urge the VA to ascertain the marginal tax rates in question and then to recalculate Ms. Schmitt's RIT allowance. If the rates are as the agency originally assumed, the calculation of the allowance which it made is almost correct. If the rates are higher than assumed, the RIT allowance is higher as well, and the amount of her debt is lower.

The Board has no authority to waive an agency's assessment of a debt which is based on proper application of the FTR. Nor may we reconsider an agency's determination regarding such a waiver. Statute grants to the head of each agency the authority to waive repayment of an employee's claim which arises out of an "erroneous payment" of a relocation benefit, if the head determines that collection of the debt "would be against equity and good conscience and not in the best interests of the United States." 5 U.S.C. § 5584(a). That authority, as to any debt owed by Ms. Schmitt, may be exercised only by the Secretary of Veterans Affairs. *Cindy L. Luciano*, GSBCA 16403-RELO, 04-2 BCA ¶ 32,715; *Stephen Barber*, GSBCA 15825-RELO, 03-1 BCA ¶ 32,063 (2002); *Russell*.

STEPHEN M. DANIELS
Board Judge