In Re:

[Redacted]

Claimant

DATE: August 18, 1997

Claims Case No. 97060228

CLAIMS APPEALS BOARD DECISION

DIGEST

The payment of Withholding Tax Allowance (WTA) in excess of the amount ultimately allowed under the Relocation Income Tax Allowance (RITA), where the amount of WTA advanced was proper under then existing regulations, is not subject to waiver under 5 U.S.C. § 5584 because the amount of WTA paid was not erroneous.

DECISION

, a civilian employee of the Department of the Army, appeals the settlement of the U.S. General Accounting Office[(1)] which disallowed the employee's application for a waiver of the indebtedness that resulted from paying him excess Withholding Tax Allowance. Pursuant to Public Law No. 104-316, October 19, 1996, the authority of the Comptroller General to waive a claim of the United States against a person arising out of an erroneous payment of pay or allowances, including travel, transportation or relocation expenses and allowances, was transferred to the Director, Office of anagement and Budget (OMB). The Director of OMB delegated his waiver authority involving all uniformed service members and civilian employees of the Department of Defense to the Secretary of Defense effective December 18, 1996. The Defense Office of Hearings and Appeals exercises the authority of the Secretary.[(2)]

Background

The record shows that the employee was issued travel orders on September 23, 1993, transferring him from [Redacted]. On February 14, 1994, the employee submitted his travel voucher for payment, and the paid reimbursement included $1,537.47 for Withholding Tax Allowance (WTA). This amount was calculated by multiplying the taxable reimbursement of $3,954.40 by the 38.88 percent WTA rate. In a subsequent claim for payment of Relocation Income Tax Allowance (RITA), the Defense Finance and Accounting Service determined that the employee was entitled to receive only $697.84 ($3,954.40 X 17.6471 percent). WTA is considered an advance of RITA; therefore, the RITA payment is offset by the WTA amount previously paid. Because the employee received WTA in the amount of $1,537.47 and he was entitled to only $697.84, he was overpaid $839.63.

In denying the employee's application, GAO noted that the setting of the rates and the application of these rates to a specific claim is a matter within the administrative agency's discretion as guided by Title 41 of the Code of Federal Regulations (C.F.R.), Part 302-11, and the proper application of these rules is the responsibility of the agency and not subject to review by GAO. GAO also noted that under 41 C.F.R. § 302-11.9(b)(3), if the agency's calculations result in a negative amount, the employee is obligated to repay this amount to the agency. The GAO found that the WTA payment was proper when made, and that there was no "erroneous" payment for purposes of the waiver statute, title 5, United States Code, Section 5584 (5 U.S.C. § 5584).[(3)]

The employee appeals without specifying any legal basis to support his contention that the WTA should not have been assessed at 38.88 percent.

Discussion

There is no basis in the record for us to conclude that the WTA was erroneous when paid. As GAO pointed out, there is authority under 5 U.S.C. § 5584 to waive the erroneous overpayment of pay and allowances made to employees when collection would be against equity and good conscience and not be in the best interests of the United States, but waiver is not proper when there is no "erroneous" payment. Moreover, this Office, as the successor to the GAO, generally does not have jurisdiction over tax matters; those issues are within the authority of the Internal Revenue Service (IRS). See Victor Crichton, 66 Comp. Gen. 570 (1987) and Patricia J. Engevik, B-202201, Dec. 23, 1981. Clearly, the applicable rate for payment of WTA is outside this Board's jurisdiction.

The relationship of WTA to RITA is similar to the situation where a service member or employee receives as an advance of funds for travel. It is well established that amounts advanced to such service members or employees are not erroneous when advanced merely because they overpay the amount that the member or employee ultimately is legally entitled to receive. The Comptroller General has held, for example, that travel advances are not meant to represent a final payment that the traveler is entitled and that travelers who receive advance funds are on notice that they are entitled to be reimbursed only for legally authorized expenditures. In such circumstances, waiver is usually limited to amounts erroneously authorized where the member actually spent the advance in reliance on the duly authorized, albeit erroneous travel orders. Compare John P. Spanik, B-247872, Sept. 25, 1992 and Timothy M. Trogdon, B-244508, Nov. 26, 1991. See also 4 C.F.R. § 91.4(d).

Conclusion

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

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Michael D. Hipple

Chairman, Claims Appeals Board

Signed: William S. Fields

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William S. Fields

Member, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin

Member, Claims Appeals Board

1. Settlement Certificate Z-2943423-025, June 14, 1996.

2. The legal basis of the transfer is further described in B-275605, Mar. 17, 1997.

3. GAO found that the WTA rate was based on the Internal Revenue Service's regulations in effect at the time, and that while the Department of Defense had requested the authority to use lower rates for lower grade employees to avoid possible overpayments of WTA, this approval was granted after the employee's travel voucher.