

## **Argument to have Court Take Judicial Notice that BAH-II (RC-T) is the Basic Allowance for Housing Rate that does not include variable housing costs:**

### **I. LAW:**

- A. Congress has the authority to establish housing allowances for members of the Uniformed Services.. Chapter 7, Title 37 USC §403. This statute further empowers the Secretary of Defense to issue implementing regulations.
- B. The Secretary of Defense has exercised his authority under 37 USC §403 by publishing the Joint Federal Travel Regulations (available at: <http://www.defensetravel.dod.mil/site/travelreg.cfm> ), where in Volume 1, at Chapter 10, Part A, ¶U10002, it defines the various types of housing allowance and the types of housing allowance that is authorized under various circumstances. Under ¶U10002.B., sub¶ 6 & 7 defines BAH-Transit (T) Rates and BAH Reserve Component (RC) Rates as follows:
6. BAH Transit Rates. The BAH Transit rate varies depending on old PDS (permanent duty station) location and the housing allowance type received. Unless a location-specific rate is payable, the default Transit rate is the amount of BAQ on 31 December 1997 incremented by the average housing allowance increase each year.
7. BAH Reserve Component Rates. The BAH-RC rate for a period of active duty for a non-contingency of 30 or fewer days is the BAQ amount on 31 December 1997 incremented by the average housing allowance increase each year.
- C. The Department of Defense Office of Military Compensation defines and recognizes BAH-II (RC/T) (BAH Reserve Component/Transient Rate) as not including any variable area housing costs. It is defined as follows:

“BAH-II (RC/T) is the housing allowance for members in particular circumstances, for example, reservists on active duty less than 30 days. It also applies when a member is in transit from selected areas where no prior BAH rate existed. ***It does not vary by geographic location.*** BAH-II (RC/T) was set based on the old Basic Allowance for Quarters (BAQ) (in effect on December 31, 1997), which was based on the national average for housing. BAH-II is published annually and is determined by increasing the previous year’s table by the percentage growth of housing costs.” (***emphasis added.***) (Source: <http://militarypay.defense.gov/Pay/DifferentBAH.html> , last visited on June 4, 2011)

- D. The BAH-II (RC/T) Annual Rates are found on page 3 of the Department of Defense Military Pay Table available at:  
<http://www.dfas.mil/dfas/militarymembers.html>
- E. Under O.C.G.A. §24-1-4 (F.R.E 201) a party or the Court may take Judicial Notice of the law and regulations of other states or of the United States.

## II. SCRIPT

- F. May it please the Court. OCGA §19-6-15(f)(1)(E) provides in part that in determining the gross monthly income of members of the Uniformed Services that we only include so much of their housing allowance that does not include “variable area housing costs.” Accordingly we ask the Court to take Judicial Notice under O.C.G.A. §24-1-4 (FRE 201) of a federal regulation (JFTR, Vol 1, Ch. 10, Part A, ¶U10002.B.) promulgated under authority of a federal statute (37 U.S.C. §403) wherein the U.S. Congress authorized members of the Uniformed Services the entitlement to a Basic Housing Allowance (BAH), and the Secretary of Defense under delegated authority has defined that the Basic Allowance for Housing at the Reserve Component and Transient Rate (BAH-II (RC/T) as being the category of Housing Allowance that does not contain any variable area housing costs. The Table for BAH (RC/T) is found on page 3 of the DoD Pay Table, and varies only by military pay grade and whether the service member is considered to have dependents residing with him. For purposes of determining gross monthly income under OCGA §19-6-15 for (party’s name), who has been established as being a member of the Uniformed Services, GA Law (OCGA §19-6-15(f)(1)(E)) specifies that we are to use the without dependent rate. Based upon (party’s name) testimony that he is a (pay grade) in the (Branch of the of the Uniformed Services), and using the Table at page 2 of the DoD Pay Table for (year), the amount of his Basic Housing Allowance shown on his/her Leave and Earnings Statement that we are to include is only that amount shown in the BAH-II (RC/T) table for his pay grade and without dependents. That amount is \$\_\_\_\_\_ according to that Table.

## III. LAYING THE FOUNDATION WITH QUESTIONS TO ASK THE MILITARY MEMBER

- G. QUESTIONS TO ASK THE MILITARY MEMBER:
- i. What is your vocation? (Answer: I serve in the: U.S. Army, Navy, Air Force, Marine Corp, Coast Guard, etc.)
  - ii. And what is your present Pay Grade? (e.g..) E-3 or O-4, or WO-2, etc

- iii. I show you what is market as (Exhibit Number), which is the DoD Pay Table, and direct your attention to page 3 of that Table. Can you advise the Court of what is your entitlement based upon your present pay grade for Basic Allowance for Housing at the BAH RC/T Rate and at the without dependents rate? (Answer: Yes, since I am a (pay grade), my without dependent rate for BAH-II (RC/T) is \$\_\_\_\_\_ per month.)
- iv. Is this amount different from what is you actual BAH as shown on your Leave and Earnings Statement, which is Exhibit \_\_\_\_? (Answer: Yes, my BAH as shown on my LES includes the variable area housing costs for where I am presently assigned. (It may also include some Special Pay or other Allowances, especially if they are assigned overseas or in a combat zone. ( NOTE: OCGA §19-6-15(f)(1)(E) states that “gross income” should include ONLY the Service Member’s: (1) Base Pay; (2) BAS; and, (C) So much of their Housing Allowance that DOES NOT include “variable area housing costs.”))
- v. Based upon your knowledge, do you know if your BAH-II (RC/T) rate at your pay grade includes any variable area housing costs? (Answer: No it does not.)
- vi. What do you base that conclusion upon? (Answer, Because it is the same for all members of the Uniformed Services based upon their pay grade and REGARDLESS of where they are assigned.
- vii. I now show you what is marked as t (party’s) Exhibit \_\_\_\_\_, which is a page printed from the Department of Defense Military Compensation website that defines the different types of Basic Allowance for Housing. Are you familiar with this document? (Answer: Yes)
- viii. What does it say about BAH-II (RC-T) specifically as it relates to whether variable area housing costs are included in it? (Answer: It states that “It does not include variable area housing costs.”)

H. DOCUMENTS TO MARK AND INTRODUCE FOR THIS PURPOSE:

- 1) Copy of 37 USC §403 without annotations
- 2) Copy of JFTR Vol. 1, Part A, Ch 10, ¶10002.B. sub¶ 6 & 7
- 3) Copy of page from DoD Military Compensation Website defining the different types of BAH
- 4) Copy of DoD Pay Table for the Year, specifically page 3
- 5) Copy of Military Member’s current Leave and Earnings Statement