

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

---

August, 14, 2001

---

GSBCA 15500-RELO

In the Matter of MARION D. TAYLOR

Marion D. Taylor, Memphis, TN, Claimant.

Thomas L. Brockman, Jr., Director, Finance Center, United States Army Corps of Engineers Finance Center, Millington, TN, appearing for Department of the Army.

NEILL, Board Judge.

Claimant, Mr. Marion D. Taylor, a retired member of the armed services, is currently employed as a civilian by the United States Army Corps of Engineers. In 1999, he went through a permanent change of station (PCS) move. He disagrees with his agency's calculation of his relocation income tax (RIT) allowance and has asked that we review the calculation for correctness. For the reasons set out below, we grant the claim.

## Background

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., W. Don Wynegar, GSBCA 15602-RELO (Aug. 2, 2001); Linda R. Drees, GSBCA 14436-RELO, 99-1 BCA ¶ 30,198; 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 repeat those explanations here. Nevertheless, for purposes of this decision, we repeat some general observations on the regulatory scheme relating to the withholding tax allowance (WTA) and the RIT allowance granted to employees who are transferred in the interest of the Government.

Agencies are directed by statute to reimburse employees for "substantially all" of the income taxes they incur for reimbursed moving expenses. 5 U.S.C. § 5724b(a) (1994 & Supp. V 1999). The Administrator of General Services has issued regulations implementing this statute. They are found in the Federal Travel Regulation (FTR). 41 CFR pt. 302-11 (1999) (FTR pt. 302-11). These regulations apply to all Government employees. For civilian employees of the Department of Defense, such as Mr. Taylor, these regulations are

further explained and supplemented in the department's Joint Travel Regulations (JTR). JTR ch. 16 (June 1999).

Both the FTR and the JTR implement this statutory directive by establishing a two-step procedure for agencies to use in reimbursing employees for income taxes that result from the reimbursement of various relocation expenses. The first step is to calculate and pay a WTA. FTR 302-11.7; JTR C16007. The second step is to calculate a RIT allowance. FTR 302-11.8; JTR C16008.

When an agency reimburses an employee for nondeductible moving expenses, it withholds federal taxes from the amount paid because the reimbursed amount is considered to be compensation for the employee. One purpose of the WTA, therefore, is to offset the amount of federal income taxes withheld from the reimbursed amount. Another purpose of the WTA is to offset the amount of federal income taxes due on and withheld from payment of the WTA itself -- since it too is considered compensation for the employee. Agencies use a formula set out in the regulations to calculate the WTA in the year that the employee is reimbursed for moving expenses -- referred to in the FTR and the JTR as "Year 1."

The purpose of the RIT allowance is to reimburse the employee for any added tax liability that was not reimbursed by payment of the WTA. The RIT allowance is normally calculated in the year following the year in which the employee received his or her relocation benefits ("Year 2"). While the WTA is calculated at a flat rate, regardless of the employee's tax bracket, the RIT allowance is based, in part, on the employee's actual tax situation. One of the factors used in calculating a transferred employee's RIT allowance is the employee's "earned income." By regulation, this income includes only the amount of gross compensation reported on the Internal Revenue Service (IRS) Form W-2 or, if applicable, the net earnings (or loss) for self employment as shown on Schedule SE of the IRS Form 1040. FTR 301-11.5(h); JTR C16005-H.

If the agency calculates a RIT allowance using the prescribed formula and the result is a positive dollar amount, the agency will pay that additional amount to the employee. If, on the other hand, the agency calculates a RIT allowance and the result is a negative dollar amount, this means that the agency paid an excessive amount of WTA, and the employee has to repay that excess WTA to the agency.

In this case, Mr. Taylor filed his federal income tax return for 1999 before receiving a W-2 form from his agency finance center, which showed the PCS benefits he had received in 1999 in connection with his authorized PCS move to Memphis, Tennessee. Upon receiving this W-2 form, he filed an amended return. In doing so, he found that he had no additional tax to pay because the amount shown on the agency W-2 form as withheld, namely, \$1302, was precisely the amount of additional tax due on the amended return. This, in the claimant's own words, "substantially cover[ed] my increased liability for the Federal Income Tax."

Mr. Taylor subsequently submitted a RIT allowance voucher for tax year 1999. The agency, however, took issue with what he listed as his earned income for 1999. Specifically, the agency objected to his inclusion of military pension payments he had received during

1999 as earned income. It, therefore, removed the pension payments from Mr. Taylor's stated earned income and calculated his RIT allowance based upon this reduced figure. Mr. Taylor's military pension represented over twenty-two percent of his adjusted gross income for 1999. Accordingly, when the agency calculated his RIT allowance based upon an earned income from which the pension distributions were subtracted, it concluded that the original WTA of \$1302 was \$711 in excess of what it should have been. It, therefore, demanded that Mr. Taylor return that amount as overpaid.

Mr. Taylor considers the exclusion of his military pension from the category of earned income for purposes of the RIT allowance calculation to be unfair and discriminatory against him as a military retiree. For this reason, he has appealed the agency's claim for \$711.

#### Discussion

It is indeed correct that the information regarding distributions from Mr. Taylor's retired military pension was not provided to him on an IRS Form W-2, but on an IRS Form 1099. The Form 1099, however, has not always been used for this purpose. The General Accounting Office (GAO), our predecessor in deciding claims of this nature, addressed a claim identical to that of Mr. Taylor in 1994. In its decision, GAO noted that, at the time the definition of earned income was issued in the FTR regulation on the calculation of the RIT allowance, military retired pay was in fact reported on the IRS Form W-2. The GAO, therefore, concluded that even after the Form 1099 was used in lieu of Form W-2 for reporting military pension distributions, this income should still continue to be included in earned income for purposes of calculating the RIT allowance. James P. Lenahan, B-256731 (Nov. 8, 1994). GAO's interpretation and application of the regulatory definition of earned income to military pension distributions appear to us to be fundamentally fair and very much in keeping with the objective of the statute which the regulations aim at implementing. We, therefore, will accept this precedent as our own and apply it here.

Mr. Taylor's request, that the calculation of his RIT allowance be based upon earned income which includes the distributions from his military pension during 1999, is granted.

---

EDWIN B. NEILL  
Board Judge