

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

November 8, 2005

GSBCA 16726-RELO

In the Matter of BRUCE W. CRITTENDEN

Bruce W. Crittenden, Milton-Freewater, OR, Claimant.

Shirley Lee Autry, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

GOODMAN, Board Judge.

Claimant, Bruce W. Crittendon, is an employee of the Department of the Army. He has asked this Board to review the agency's determination that he received an overpayment of his relocation income tax (RIT) allowance resulting from his permanent change of station (PCS) move.

Factual Background

Claimant was transferred from Vicksburg, Mississippi, to Walla Walla, Washington, with a report date of August 25, 2003. The agency reimbursed him for some of his moving expenses and a RIT allowance to compensate for the increased tax liability he incurred due to his receipt of the moving expense reimbursements. When the agency calculated the amount of claimant's RIT allowance for his increased tax liability, it did not include in the calculation of his earned income the amount he received from his wife's retirement income because this amount was reported to the Internal Revenue Service (IRS) on IRS Form 1099-R. The agency has demanded that claimant return \$1314.74, which it alleges is an overpayment of the RIT allowance. Claimant alleges that the agency should have included the retirement income amount in his earned income, thereby entitling him to a larger allowance, and that if it had done so he would not have received an overpayment. Claimant asks us to review the agency's decision not to include his wife's retirement income as earned income.

Discussion

The regulations that govern the agency's calculations explain that when the amount of an employee's RIT allowance is determined, earned income only includes amounts reported on IRS Form W-2 and the net earnings from self-employment shown on Schedule SE of IRS Form 1040. JTR C16002; 41 CFR 302-17.5(h) (2003).

Retirement income reported on an IRS form 1099-R usually cannot be included in the calculation of earned income. See, e.g., Paul M. Dudek, GSBGA 15666-RELO, 02-1 BCA ¶ 31,689. However, there is an exception to the rule set out in 41 CFR 302-17.5(h). Retirement income reported on IRS Form 1099 can be included as part of earned income when calculating withholding tax allowances if the retirement pay was required to be reported on IRS Form W-2 in 1985, when the regulation was first promulgated, and if the retirement pay is taxable pay. Eddie G. Hoklotubbe, GSBGA 05-1 BCA ¶ 32,814 (2004); Marion D. Taylor, GSBGA 15500-RELO, 01-2 BCA ¶ 31,607; James P. Lenahan, B-256731 (Nov. 8, 1994) (interpreting substantially identical language in prior versions of the applicable regulations).

Decision

Based upon the record of this case, we are unable to determine if the agency correctly calculated claimant's RIT allowance, as we cannot determine if claimant's spouse's retirement pay is within the exception to the regulation. If claimant can supply additional information to satisfy the agency that his wife's retirement income is within this exception, the agency should recalculate the RIT allowance to include the amount of the retirement income in earned income. If not, then the agency's calculation of the RIT allowance has complied with the regulations.

ALLAN H. GOODMAN
Board Judge