UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 21, 2007

CBCA 799-RELO

In the Matter of MARLA J. CAZIER-MOSLEY

Marla J. Cazier-Mosley, Fort Collins, CO, Claimant.

Sandra S. Williams, Office of the Chief Financial Officer, Department of Agriculture, Washington, DC, appearing for Department of Agriculture.

SOMERS, Board Judge.

Non-taxable combat pay received by the spouse of a transferred employee is not considered part of the employee's gross compensation when calculating the relocation income tax (RIT) allowance to which the employee is entitled.

Background

The Department of Agriculture transferred Marla J. Cazier-Mosley to Fort Collins, Colorado in November 2004. It paid her relocation benefits in conjunction with this move. Along with these benefits, the agency also paid a RIT allowance. In determining the amount of this allowance, the Department of Agriculture applied the formula prescribed by the Federal Travel Regulation (FTR). *See* 41 CFR 302-17.8(f) (2004). This formula required the insertion of a combined marginal tax rate (CMTR) - a single rate determined by combining the applicable marginal tax rates for federal, state, and local income taxes - for the employee for the year in question. *Id*. 302-17.5(j).

The FTR provides that in calculating an employee's CMTR, an agency shall use a figure based on the earned income of the employee (and the employee's spouse, if there is one and the employee and spouse file jointly). 41 CFR 302-17.8(d). The term "earned income" is defined, for the purposes of the RIT allowance, to include "only the gross compensation (salary, wages or other compensation . . .) that is reported as income on IRS [Internal Revenue Service] Form W-2 for the employee (employee and spouse, if filing

jointly), and, if applicable, the net earnings (or loss) for self-employment income shown on Schedule SE of the IRS Form 1040." *Id*. 301-17.5(h).

The Department of Agriculture used as Ms. Cazier-Mosley's CMTR a figure based on the earned income which included both her salary and her spouse's salary less the portion of her spouse's salary identified as non-taxable combat pay. Ms. Cazier-Mosley contends that the agency should not have deducted the non-taxable combat pay in determining earned income. If the agency had adopted the employee's position, it would have used a higher figure for earned income. This would have resulted in the agency's using a higher CMTR, which would have led to the employee's having received a larger RIT allowance.

Discussion

Relocation benefits paid by the Government to employees whom it transfers from one permanent duty station to another are generally considered taxable income to the 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.

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 conjunction with the Secretary of the Treasury (who supervises the IRS). 5 U.S.C. § 5738(b); *see* 41 CFR 302-17. The procedures "are based on certain assumptions jointly developed by the GSA and IRS, and tax tables developed by the 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 reimbursement, 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(2). *See generally Jason K. Peterson*, GSBCA 16820-RELO, 06-1 BCA ¶ 33,280; *Robert D. Baracker*, GSBCA 16781-RELO, 06-1 BCA ¶ 33,257; *W Don Wynegar*, GSBCA 15602-RELO, 01-2 BCA ¶ 31,563; *Robert J. Dusek*, GSBCA 14325-RELO, 98-1 BCA ¶ 29,440 (1997).

As noted above, the prescribed procedures require the calculation of a CMTR which is based on an employee's earned income, and that earned income includes "gross compensation." The regulation provides that for its purposes, "appropriate earned income shall include only the amount of gross compensation reported on IRS [Internal Revenue

Service] Form(s) W-2, and, if applicable, the net earnings (or loss) from self employment income as shown on Schedule SE of IRS Form 1040." 41 CFR 302-11.8(d).

Under the Internal Revenue Code, gross income does not include combat pay. Specifically, I.R.C. § 112 (26 U.S.C. § 112) states that certain compensation received by members of the Armed Forces of the United States serving in combat zones shall not be included in gross income and is nontaxable. Accordingly, the Department of Agriculture's determination to calculate Ms. Cazier-Mosley's CMTR on the basis of the earned income as reflected in IRS form W-2 box 1, which did not include the nontaxable combat pay, is consistent with I.R.C. § 112 .

Decision

The claim is denied.

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JERI KAYLENE SOMERS
Board Judge