



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

November 7, 2008

CC:ITA:B04:
CONEX-146682-08

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The Honorable Ciro D. Rodriguez
1950 SW Military Drive
San Antonio, TX 78221

Attention:

Dear Congressman Rodriguez:

I am responding to your inquiry dated August 27, 2008, on behalf of your constituent and retired IRS employee, . asked for explanation about a Form W-2 for the tax year 2007 that included reimbursement for relocation expenses we collected in 2008 by an offset against his pension.

On , entered into an agreement with the IRS to relocate from to . This agreement required to remain employed with the federal government for not less than twelve months after he reported for duty in . The agreement also required to repay the money reimbursed for his relocation to if he separated from the federal government before the end of the 12-month period.

During , we reimbursed \$ for a house-hunting trip, \$ for miscellaneous expenses, and processed a \$ withholding tax allowance. When prepared paperwork to retire before the end of his 12-month commitment, we advised him of his obligation to repay the amounts reimbursed for his relocation. After retired in , we billed him on , for \$ to repay his house hunting and miscellaneous reimbursements.

In January 2008, we issued a form W-2 to for \$. In , we offset pension to recover \$ of the expenses, plus interest and penalties.

The expenses we reimbursed were not qualified moving expense reimbursements. (sections 132 and 217 of the Internal Revenue Code). Therefore, he must generally include these reimbursements in gross income as compensation for services (section 82 of the Code). The fact that he is legally obligated to repay us these amounts does not of itself change this result.

received these reimbursements under a claim of right, and because in 2007 he failed to repay them or acknowledge his obligation to do so, he must include them in his 2007 gross income. However, may deduct the 2008 offsets against his pension income to repay the reimbursements as miscellaneous itemized deductions on his 2008 federal income tax return.

I hope this information is helpful. If you have any questions, please call me at () or ()

Sincerely,

Michael J. Montemurro
Branch Chief, Branch 4
(Income Tax & Accounting)