TAXADVISOR

Clawing Back GIS

Seniors should be aware that reporting "income" can affect their GIS entitlement

COURT REPORT

BY JAMIE GOLOMBEK

Low-income seniors are often entitled to the Guaranteed Income Supplement (GIS), paid by the federal government to Old Age Security (OAS) recipients with little other income in the preceding year. Like OAS, GIS is "clawed back" based on income earned by a senior at a rate of 50% on 2007 income above $14,904.

Seniors often forget that income for the purposes of calculating the GIS entitlement includes items that we don't normally think of as "income" but that technically affect the "net income" calculation on the personal T1 tax return.

A recent tax case released last month between Salvatore Gramaglia and the Minister of Human Resources and Social Development, the department in charge of administering both the OAS and GIS, illustrates this. The case (Gramaglia v Canada, 2007 TCC 218) involved Gramaglia's 2005 GIS benefits. They were reduced by the government to take into account Gramaglia's German pension along with non-repayment of amounts owing under the federal Home Buyers' Plan (HBP).

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When Gramaglia applied for his 2005 GIS, he reported his 2004 income as $1,716, which he received as part of his German disability pension. But he did not declare $800 of RRSP income, the amount he was required to repay under the HBP for 2004.

In 1993, Gramaglia withdrew $12,000 to purchase a home. Under the HBP, he was required to pay back into his RRSP $800 annually for 15 years. Having failed to pay $800 into his RRSP in 2004, he was required to include this amount in his net income.

THE GERMAN PENSION

In determining whether the German pension should be included in the calculation of the GIS clawback, the Tax Court judge referred to the Supreme Court of Canada's (SCC) 1996 decision in Swantje v. Canada (1996 1 C.T.C. 355). In this case, the SCC agreed with the Federal Court of Appeal, finding that even though an amount may not be taxable, it may still be included in the determination of a Canadian resident's entitlements to social security programs.

As for pensions, Canada taxes the same portion of the pension payments that Germany would tax if the recipient were a resident in Germany, a portion roughly based on the income earned in the pension. A chart is available from the Canada Revenue Agency that shows the percentage of payments that are now taxable, based on the age of the pensioner on the date the pension first began. Specifically, the Federal Court stated that the intent of the clawback legislation is to require "the repayment of social benefits by taxpayers who, because of their higher incomes, have a lesser need of them." As a result, Gramaglia had to include the pension in his 2004 income to calculate his 2005 GIS entitlement.

HBP NON-REPAYMENT

The judge then turned to the $800 income inclusion resulting from Mr. Gramaglia's non-repayment of the 2004 HBP amount. The judge wrote that "the principle of this (rule). . . is that (Gramaglia) was able to reduce his taxable income when he contributed to his RRSP. He was not taxed when he withdrew proceeds from his RRSP to purchase a home. Therefore, he must be taxed on those proceeds at some point. If he failed to repay the withdrawn proceeds into his RRSP, he is taxed on the amount of proceeds that he was required to pay in 2004 as so determined."

The judge therefore dismissed Gramaglia's appeal and his GIS was properly reduced taking into account both his German pension income and his HBP non-repayment.

While little could have been done about Gramaglia's pension, perhaps he should have repaid the $800 HBP annual requirement to avoid losing GIS, assuming, of course, he had the cash. AER

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