



Legal Opinion L-2002-02
February 22, 2002

U.S. Railroad Retirement Board Phone: (312) 751-7139
844 North Rush Street TTY: (312) 751-4701
Chicago Illinois, 60611-2092 Web: <http://www.rrb.gov>

TO : James A. Verplaetse
Chief of Payment Analysis and Systems

FROM : Steven A. Bartholow
General Counsel

SUBJECT : Federal Tax Reports for Cancelled Annuities

This is in reply to your inquiry of January 23, 2002, requesting my advice as to whether you may alter the method whereby the Board reports to the Internal Revenue Service annuities paid based upon a cancelled application under the Railroad Retirement Act (RRA). For the reasons discussed below, I find no legal objection to your proposed changes.

Your memorandum states that you anticipate a number of annuitants will cancel their current annuity application and re-file to qualify under the provisions of the Railroad Retirement and Survivors' Improvement Act of 2001 (RRISA). Where an applicant has received annuity payments based upon the prior annuity application, all payments must be repaid. Your memorandum states that the Board currently: (1) does not report to the Internal Revenue Service (IRS) annuities paid when the annuity application is cancelled before the end of the first tax year in which the annuity is paid; and (2) files "corrected" reports to the IRS showing nothing paid to the annuitant ("zero reports") when the annuity payments based on the cancelled application were issued during a prior tax year, and were previously reported as payments made to the annuitant during that year. Effective for tax statements issued in calendar 2002, you propose to report annuities paid on an application which is later cancelled as actually paid, whether payment was made only in the year of cancellation, or in prior years as well. Repayment of the cancelled annuities would be reported only in the year repayment occurs.

Section 5(b) of the Railroad Retirement Act provides that an application for an annuity under the Act shall be made and filed in such manner and form as the Board may prescribe. Pursuant to this authority, the Board has promulgated Part 217 of the regulations (20 CFR 217), which prescribes requirements for filing annuity applications. Section 217.26(a) provides that an annuity application, previously filed, may be cancelled if the applicant files a written cancellation before the date the annuity is awarded. Once payment is made, the application may be cancelled by the applicant only if (1) any other person who would lose benefits due to the cancellation consents in writing, and (2) all annuity payments already made based on that application "are repaid or will be recovered." 20 CFR 217.26(b). Section 217.27 further provides in part that "When a person cancels an application the effect is the same as though an application was never filed."

As noted above, the Board promulgated section 217.27 of the regulations under the authority granted by Congress to the Board to administer the Railroad Retirement Act. The Internal Revenue Code, however, is administered by the Internal Revenue Service of the Department of Treasury. The judgment of the Board that withdrawal of an application under the RRA shall have the same effect as if no application has been filed is perforce limited to the effect of that application under the RRA. The effect under the Internal Revenue Code of cancellation of an annuity application and repayment of any benefits received on the basis of that application must be determined by reference to the Code, not to the regulations of the Board.

As you know, the methods whereby annuities under the RRA may be included as taxable income to the annuitant are specified by sections 86 and 72 of the Internal Revenue Code of 1986. Section 86 of the Code (26 U.S.C. 86) provides that the "social security equivalent" portion of the tier I annuity component, and any monthly annuity paid under the social security minimum guaranty provision of the RRA (RRA section 3(f)(3)), are subject to taxation on the same basis as benefits under the Social Security Act. Section 86(d)(2) of the Code further provides:

(2) Adjustment for repayments during year. (A) In general. For purposes of this section the amount of social security benefits received during any taxable year shall be reduced by any repayment made by the taxpayer during the taxable year of a social security benefit previously received by the taxpayer (whether or not such benefit was received during the taxable year.)



Legal Opinion L-2002-02
February 22, 2002

U.S. Railroad Retirement Board Phone: (312) 751-7139
844 North Rush Street TTY: (312) 751-4701
Chicago Illinois, 60611-2092 Web: <http://www.rrb.gov>

Code section 6050F(a) (26 U.S.C. 6050F(a)) imposes upon the Board a duty to file with the IRS a return for social security equivalent benefits which sets forth the:

- (1)(A) aggregate amount of social security benefits paid with respect to any individual during any calendar year,
- (B) aggregate amount of social security benefits repaid by such individual during such calendar year * * * and
- (2) the name and address of such individual.

Subsection 6050F(b) further requires that the Board:

- (b) * * * shall furnish to each individual whose name is required to be set forth in such return a written statement showing—
 - (1) the name of the agency making the payments, and
 - (2) the aggregate amount of payments, of repayments, and of reductions, with respect to the individual required to be shown on such return.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

Section 72(r) of the Code (26 U.S.C. 72(r)) provides that the remaining portion of an annuity under the RRA shall be income to the employee to the same extent as a private pension under an employer plan. That section does not include a provision for allocating repayments comparable to 86(d)(2). Further, section 6050G of the Code (26 U.S.C. 6050G) requires the Board to file a return to the IRS showing:

- (1) the aggregate amount of benefits paid under the Railroad Retirement Act of 1974 (other than [social security equivalent] * * * benefits * * *) to any individual during any calendar year,
- (2) the employee contributions (to the extent not previously taken into account under section 72(d)(1) which are treated as having been paid for purposes of section 72(r),
- (3) the name and address of any such individual, and
- (4) such other information as the Secretary may require.

Section 6050G(b) directs the Board to furnish annuitants with a written statement showing “the aggregate amount of payments to such individual, and of employee contributions with respect thereto, required to be shown on the return”.

Legal Opinion 91-84 considered the effect of various adjudicative actions on the Board’s obligations under sections 6050F and 6050G. The General Counsel advised that the “Board’s obligation in preparing its Form 1099’s and W-2P’s is to reflect annuities received by or made available to the annuitant * * * in the year to which the statements relate. * * * A determination of nonentitlement in a subsequent tax year does not require a change in tax statements for the year for which nonentitlement is determined.” Later, Legal Opinion L-94-38 specifically considered the absence from section 6050G of the requirement to report aggregate repayments as well as aggregate amounts paid. That opinion advised that:

[w]ith respect to social security equivalent benefits, the Board must report to the IRS and the annuitant the gross amount of benefits paid in a calendar year and the gross amount repaid. These amounts are not



Legal Opinion L-2002-02 February 22, 2002

U.S. Railroad Retirement Board Phone: (312) 751-7139
844 North Rush Street TTY: (312) 751-4701
Chicago Illinois, 60611-2092 Web: <http://www.rrb.gov>

netted and the amounts repaid are reported without regard to the calendar year to which the repayment relates. * * * In view of the absence of the word "repayment" in section 6050G as well as the absence of a netting rule in section 72(r) * * * there would appear to be no requirement to report repayments under section 6050G.

From the perspective of the Code, an annuitant's cancellation of his annuity application is a subsequent event which relates back to prior payment years comparable to an untimely notice of death received in a subsequent year. At minimum, section 6050F requires only that the Board report repayment of the social security equivalent benefit portion of a cancelled annuity in the year repayment is made. Your proposal to discontinue issuing "zero" reports for prior years when an annuity retroactively withdraws the application is therefore consistent with advice this office previously provided that prior year tax statements need not be revised in such a case.

Your second proposal, to begin reporting current year payments and repayments where cancellation occurs in the first year of payment, is clearly consistent with the agency's duty under section 6050F to report payments and repayments of social security equivalent benefit amounts in a calendar year. Moreover, in my opinion the language of 6050G requires that the Board report payment of any non-social security equivalent benefit portion of cancelled annuities in the year paid.

For the foregoing reasons, I therefore have no legal objection to your proposed changes in the method of reporting under the Internal Revenue Code payments made to annuitants on the basis of cancelled annuity applications.