



Legal Opinion L-2003-09
August 15, 2003

U.S. Railroad Retirement Board
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Dear _____ :

This is in response to your request, directed to Mr. Robert Bergeron, Assistant to the Labor Member of the Railroad Retirement Board, that I review the amendment to section 143.124 of the Missouri Revised Statutes (V.A.M.S. § 143.124) by Missouri House Bill No. 600, enacted July 1, 2003, and consider whether the amendment renders railroad retirement annuities subject to income taxation by the state of Missouri.

The first subsection of section 143.124, which was not altered by the 2003 amendment, provides in pertinent part that:

1. Other provisions of law to the contrary notwithstanding, the total amount of all annuities * * * above * * * six thousand dollars annually provided by any law of this state, [or of] the United States, * * * shall be subject to tax under the provisions of this chapter * * *.

Subsection 5 of section 143.124 further provides that although social security benefits "are not to be considered as retirement benefits", social security benefits are to be subtracted from the calculation of Missouri income. The 2003 amendment which is the subject of your inquiry adds subsection 10, which states that various exemptions of pensions from income as specified by section 143.124 apply to any pension defined by subsection 1 above, which is included in the Federal gross income calculation and not otherwise deducted from income under Missouri law.

As you know, railroad retirement annuities, including supplemental annuities, are paid pursuant to the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et. seq.). Section 14 of the Railroad Retirement Act (45 U.S.C. § 231m) provides, in pertinent part, as follows:

14(a) Except as provided in subsection (b) of this subsection and the Internal Revenue Code of 1954, notwithstanding any other law of the United States, or of any State, * * * no annuity or supplemental annuity shall be assignable or subject to any tax * * *.

(b)(1) This section shall not operate to exclude the amount of any supplemental annuity * * * from income taxable pursuant to the Federal income tax provisions * * *."

The Internal Revenue Code requires that the portion of a railroad retirement annuity which is equivalent to a social security benefit is subject to taxation on the same basis as a social security benefit. See section 86(d)(1) of the Code (26 U.S.C. § 86(d)(1)). The Code further provides that the remaining portion of a railroad retirement annuity, and any supplemental annuity, shall be taxable as income to the same extent as a private pension under an employer plan. See section 72(r) of the Code (26 U.S.C. § 72(r)). These Internal Revenue Code provisions are, in effect, exceptions to the prohibition against taxation contained in section 14 of the Railroad Retirement Act, but only for purposes of Federal income taxes. Section 14 of the Act clearly continues to



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exempt railroad retirement annuities, including supplemental annuities, from income taxation by States.

It appears that section 143.124 of the Missouri Revised Statutes may allow deduction of the social security equivalent portion of a railroad retirement annuity from the calculation of Missouri adjusted gross income but may not exclude the remaining railroad retirement annuity and supplemental annuity. However, any question has been foreclosed by the Supreme Court of Missouri in Carter v. Director of Revenue, 805 S.W. 2d 154, (Mo. 1991), cert. den. 502 U.S. 821 (1991). The Court in that case compared the prohibition by section 14 against state taxation of railroad retirement benefits with section 207 of the Social Security Act (42 U.S.C. § 407) and concluded "While federal law does not prohibit state taxation of Social Security benefits, 45 U.S.C. 231m does exclude * * * railroad retirement benefits from state taxation." 805 S.W. 2d at 156.

In accord with the decision of the Supreme Court of Missouri in the Carter case, in my opinion the exemption contained in section 14 of the Railroad Retirement Act prohibits taxation of annuities, including supplemental annuities, under the income tax laws of Missouri.

I hope the foregoing discussion is of assistance to you.

Sincerely,

Steven A. Bartholow
General Counsel