



Legal Opinion L-2002-09
May 7, 2002

U.S. Railroad Retirement Board Phone: (312) 751-7139
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Mr. G. O.
XXXXXXXXXX
XXXXXXXXXXXX

Dear Mr. O:

This is in reply to your letter dated April 21, 2002, with further reference to the determination by Revenue Canada that the portion of your gross earnings from railroad employment, which you pay as railroad retirement tax to the United States Treasury pursuant to the Railroad Retirement Tax Act, are also subject to Canadian income taxation.

As you know, annuities under the Railroad Retirement Act are comprised of independently calculated segments, or tiers. The General Counsel advises me that the tier I annuity component, which is calculated using the benefit formulas of the Social Security Act, is financed through a combination of taxes equivalent to those imposed upon non-railroad employers and their employees, and a financial interchange with the Social Security trust fund. The tier II annuity component, which is calculated under a formula using the monthly average of the employee's five years of highest railroad earnings, is financed through an additional tax imposed on employers and employees in the railroad industry.

The information sought by Revenue Canada from the Board, which includes the sum of current service and past service "contributions" from employers and employees, market value of assets, total amount paid to beneficiaries, and transfers from other "plans", is that which Revenue Canada obtains from privately administered pension plans for Canadian employees. The railroad retirement system, as a Federally mandated social insurance system, is not set up in the same manner as a private pension system and the information that Revenue Canada sought is not available.

Finally, you express disagreement with the statement in the letter to Mr. L. M. to the effect that the treatment of railroad retirement contributions by Revenue Canada is the same as such contributions are treated in the United States. The amount of taxes paid by railroad employees under the Railroad Retirement Tax Act is not excluded from income for income tax purposes in the United States.

I regret that I cannot be of greater assistance.

Sincerely,

V. M. Speakman, Jr.
Labor Member