



Legal Opinion L-2003-11
August 26, 2003

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>

August 26, 2003
L-2003-11

Dear xxxxxxxxxxxx:

This is in reply to your letter dated July 8, 2003, addressed to Mr. Karl Blank of my staff, regarding the property award made to you by the order of the District Court filed September 21, 1990 in the above captioned case. I have reviewed Mr. Blank's advice that the deductions made from Mr. xxxxxxxxxxxx's annuity under the Railroad Retirement Act pursuant to the order may begin no earlier than the annuity accrual for May 2003. I find Mr. Blank's advice to be correct.

As Mr. Blank informed you, the Railroad Retirement Board pays annuities under the Railroad Retirement Act (45 U.S.C. §§ 231-231v) from the Railroad Retirement Account, which is maintained by the Department of the Treasury of the United States. Section 14 of the Railroad Retirement Act (45 U.S.C. § 231m) generally provides that an annuity under the Act is not subject to attachment by creditors. In particular, the United States Supreme Court has held that section 14 prevented attachment of the employee annuity by the employee's former spouse in connection with an allocation of property in a state court divorce proceeding. Hisquierdo v. Hisquierdo, 439 U.S. 572 (1979).

Following the Hisquierdo decision, Congress amended section 14 to add section 14(b)(2) (45 U.S.C. § 231m(b)(2)). Paragraph 14(b)(2) waives the anti-assignment provision to the extent that a portion of the employee's annuity under the Act may be allocated as marital property in a state divorce proceeding. The Board has promulgated regulations which implement section 14 as amended, and set forth requirements which a former spouse of the employee must meet in order to attach as property benefits payable under the Act. See 20 CFR Part 295.

When the employee had not currently been receiving an annuity under the Act at the time a conforming order was received, the Board's regulations specify the following notification process at the time the employee annuity is awarded:

§ 295.4 Review of Documentation.

* * * * *

(d) Withholding after notification.

* * * (2) * * * the Board will attempt to contact the spouse or former spouse at the most recent address shown in the Board's records. The notice will inform the spouse or former spouse that an annuity has been awarded, that the spouse or former spouse may, upon submission of all required documentation, receive a portion of the annuity, and that the spouse or former spouse should contact the Board within three months from the date of the notice [during which the former spouse's share shall be withheld from the employee's annuity]. * * * If after the third month's payment has been withheld the Board has received no response from the spouse or former spouse, the amount withheld from the employee's benefit shall be paid to the employee, and the Board take no further action regarding the decree until the spouse or former spouse contacts the Board.



Legal Opinion L-2003-11 August 26, 2003

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>

Any payments made to the employee subsequent to the three-month notice period specified above and prior to receipt of a response or required documentation from the spouse or former spouse, shall be considered properly paid to the employee and the Board shall have no further liability to the former spouse with respect to any such further payments to the employee. 20 CFR 295.4(d)(4).

The Board's records in xxxxxxxx's case show that your attorney was notified by letter dated February 5, 1991, that the September 1990 order of the District Court sufficed to award to you a property interest in xxxxxxxx's future annuity, to be paid at the time he received it. The letter furnished to your attorney an Agreement of

Former Spouse form, which you signed and returned to the Board in February 1991. The heading of the Agreement form identified the railroad employee by name and social security number, and stated in part that:

I, xxxxxxxxxxxxxxxxxxxxxx, social security number [omitted] hereby claim the interest awarded to me in benefits payable to the above former railroad employee under the Railroad Retirement Act pursuant to the judgment entered on September 21, 1990 * * * [by the Kansas District Court in the above captioned case].

Following your signature and current address, the form warned:

NOTE: THE BOARD WILL CONTACT YOU REGARDING PAYMENTS UNDER THE DECREE AT THE ADDRESS SHOWN ABOVE UNLESS A MORE RECENT ADDRESS APPEARS IN THE BOARD'S RECORDS.

On December 12, 1996, the Board's Director of Operations wrote to you at the Oklahoma City address shown on your 1991 agreement form to notify you that you may receive payments from the Board, and requested additional documentation. On January 8, 1997, the letter was returned by the Postal Service as undeliverable. The Fort Worth office of the Board contacted the employee to obtain a current address, but was informed that he could not provide one.

Accordingly, after the expiration of three months, the deduction in xxxxxxxx's annuity was repaid to him. When you contacted the Little Rock Office by letter dated April 16, 2003, the Board acted to begin payment under the order to you effective May 2003, the first available payment under the monthly payment cycle.

Although you allege that you notified the Board of a change in your address prior to the time the employee annuity payment began, there is no record of a change of address in the Board's file pertaining to the employee against whose annuity you claim a property interest. The Board's regulations state that the former spouse must submit in connection with her claim for a property interest, such additional documentation as the Board may require, including current address, as a condition precedent to payment. See 20 CFR 295.3(c)(1).

Where the law requires a party give another notice in order to establish rights and obligations, the notice must state the facts required by law. 58 AM JUR 2d Notice §27. In sum, the regulations require that the notice of your claim against the employee's annuity include a current address, and his file does not show that you provided this information to the Board

with specific reference to your claim against that employee. The agency therefore properly followed its regulation regarding release of payment initially withheld from his annuity on your behalf. The property award to you was handled correctly under section 295.4(d)(4) of the agency's regulations.

As Mr. Blank also informed you, this conclusion is limited to your right to directly attach, pursuant to section 14 of the Railroad Retirement Act, payments due xxxxxxxx under the Act before they are made to him. I express no opinion regarding whether xxxxxxxx may remain directly liable to you under state law for a share of his payments prior to May 2003.



Legal Opinion L-2003-11
August 26, 2003

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>

Sincerely,

Steven A. Bartholow
General Counsel