



Legal Opinion L-2005-23
October 7, 2005

U.S. Railroad Retirement Board
844 North Rush Street
Chicago Illinois, 60611-2092

Phone: (312) 751-7139
TTY: (312) 751-4701
Web: <http://www.rrb.gov>

In reply refer to:
R.R.B. No. A-xxxxxxxxxxxx

Dear Mr. xxxxxxx:

This is in reply to your letter sent by telefacsimilie September 21, 2005, wherein you requested, on behalf of the personal representative of the deceased railroad employee's estate, the total amount of any benefits payable under the Railroad Retirement Act to anyone at the time of the decedent's death, the name of any beneficiary, and the amount of any such payment, "in order to properly complete the decedent's individual and estate tax returns." I understand that the Tampa office of the Railroad Retirement Board advised you that no benefits were payable to the estate, but declined to provide further information.

The Railroad Retirement Board is restricted with respect to the disclosure of information and records which pertain to an individual and which identify the individual to whom they pertain by section 12(d) of the Railroad Unemployment Insurance Act (45 U.S.C. § 362(d), which is incorporated into the Railroad Retirement Act by section 7(b)(3) of that Act (45 U.S.C.

§ 231f(b)(3)). Section 12(d) generally provides that information obtained by the Board in connection with the administration of this Act shall not be revealed or open to inspection nor be published in any manner revealing an employee's identity, without written authorization by the employee or other beneficiary. However, section 12(d)(ii) provides that without written authorization, "(ii) the Board may disclose such information in cases in which the Board finds that such disclosure is clearly in furtherance of the interest of the employee or his estate". In addition, section 200.8(b) of the Board's regulations (20 CFR 200.8(b)) defines the term "information" for purposes of section 12(d) to include any non-medical document or data obtained by the agency in administration of the Act, but to exclude the fact of entitlement or the amount of a benefit under the Act.

Pursuant to the foregoing, the Tampa office of the Board properly advised you as counsel for the employee's estate that the estate is not entitled to any annuity or lump sum benefit under the Act. I can also advise that the Board is currently paying a widow's monthly annuity under section 2(d)(1) of the Act (45 U.S.C. 231a(d)(1)) in the amount of \$2,017.42.

As the purpose of your inquiry relates to the decedent's estate and income tax returns, you should be aware that taxation of annuities and lump sum benefits under the Railroad Retirement Act is governed in the first instance by section 14(a) of the Act (45 U.S.C. § 231m(a)), which states:

(a) Except as provided in subsection (b) of this section and the Internal Revenue Code of 1984, notwithstanding any other law of the United States, or of any State, territory, or the District of Columbia, no annuity or supplemental annuity shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated.

Though interpretation and application of the tax laws of the various States is not within the authority of the Railroad Retirement Board, in my opinion the language of section 14(a) explicitly excludes any benefit under the Railroad Retirement Act from any State tax, including estate or inheritance taxes.

With respect to Federal estate tax, I note that the Internal Revenue Service has ruled that monthly annuities paid to survivors of an employee under the Railroad Retirement Act are not



Legal Opinion L-2005-23
October 7, 2005

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>

includible in the decedent's gross estate under section 2039(a) of the Internal Revenue Code (26 U.S.C. § 2039(a)). See: Revenue Rulings 60-70 (1960-1 Cum. Bul. 372) and 73-316 (1973-2 Cum. Bul. 318) Though sections 72(r) and 86 subsequently amended the Code to provide that monthly annuities are subject to Federal income tax (see 26 U.S.C. §§ 72(r), 86), no comparable amendments were made regarding Federal estate taxation. Accordingly, under these rulings of the Internal Revenue Service, the monthly annuity payable to a survivor of the deceased employee in your case would not be includible in his gross estate for Federal estate tax purposes.

I trust that the foregoing will be of assistance to you.

Sincerely,

Steven A. Bartholow
General Counsel