

DIGEST

NOV 12 1975
L 75 - 502

Mr. Eugene Bush
President
Estill Federal Savings
and Loan Association
129 Broadway
Irvine, Kentucky 40336

Dear Mr. Bush:

This is in reply to your letter of October 21, 1975, in which you stated that the Internal Revenue Service has advised you that railroad employees who are eligible to draw supplemental retirement benefits would not be entitled to enjoy the tax advantages pertaining to an Individual Retirement Account established under the Employee Retirement Income Security Act of 1974, and requested the assistance of this agency in informing your depositors who are railroad employees as to whether or not they are eligible to establish an Individual Retirement Account under that Act and to draw upon it after their retirement.

During your telephone conversation on November 4, 1975 with Mr. Raymond W. Gliva of the Board's Bureau of Law, you stated that the Internal Revenue Service advised you that the retirement benefits a railroad employee would receive under the Railroad Retirement Act as the result of his retirement at age 60 with 30 years of service would not render him ineligible to enjoy the tax advantages connected with an Individual Retirement Account, but that if he is covered by a company supplemental pension program he would not be able to enjoy such tax advantages.

As you know, the Employee Retirement Income Security Act of 1974, which became effective on January 1, 1975, together with certain amendments to the Internal Revenue Code, provides a method by which any individual who is not covered by a qualified private pension or profit-sharing plan or a public employee retirement plan may establish an "individual retirement account" or other approved retirement program, and thus enjoy tax advantages similar to those available for self-employed persons and employees covered by retirement plans as described in 26 U.S.C. §§ 401(a), 403(a), or 405(a). The tax advantages take the form of an additional itemized deduction of up to \$1,500 or 15 percent of earned income (whichever is less) for cash contributions made by individuals into an approved personal retirement program.

Mr. Eugene Bush

With respect to these deductions, 26 U.S.C. § 219(b)(2)(A) provides that no deduction would be allowed for an individual who actively participated, during that tax year, in an annuity plan under 26 U.S.C. § 403(a) involving an annuity contract purchased by the employer for its employees; a qualified pension, profit-sharing or stock bonus plan under 26 U.S.C. § 401(a) resulting from the creation of a trust by an employer for its employees; an employer-established bond purchase plan for employees under 26 U.S.C. § 405(a), or a retirement plan established by the United States Government, a State or political subdivision thereof or by an agency or instrumentality of such government for its employees.

Although an authoritative ruling on this point can only be given by the Internal Revenue Service, it is my opinion that active participation by an individual in the railroad retirement system, including receipt of a supplemental annuity under the Railroad Retirement Act, would not make that individual ineligible to enjoy the tax advantages pertaining to an Individual Retirement Account established under the Employee Retirement Income Security Act of 1974. The restrictions with regard to participants in other retirement programs which are contained in the aforementioned sections of the Internal Revenue Code are the only ones specified by that legislation. No mention is made of benefits provided either by the Social Security Act or the Railroad Retirement Act.

Clearly, no such restrictions are contained in the Railroad Retirement Act of 1974. The railroad retirement system is not a private pension plan, but rather is, like the social security system, a system of social insurance which is supported by special employment taxes levied, in the case of the railroad retirement system, by the Railroad Retirement Tax Act (26 U.S.C. § 3201, et seq.). The supplemental annuity is an integral part of the railroad retirement system and, like other annuity payments made under the Retirement Act, is supported by taxes paid pursuant to the Tax Act.

It is important to note that the foregoing refers only to benefits provided under the Railroad Retirement Act and not to any retirement program established by the railroads themselves. Therefore, if any of your depositors who is a railroad employee is covered by a company retirement program, such a depositor would not be eligible to enjoy the tax advantages connected with an "individual retirement account" or other approved personal retirement program.

I might add that, if a railroad employee who wants to establish an Individual Retirement Account with your association indicates that he is not certain whether he is covered by a company pension program,

Mr. Eugene Bush

you might obtain a definitive statement regarding his coverage under such a program from the personnel department of his railroad employer.

I trust that the above information will be of assistance to you.

Very truly yours,

Dale G. Zimmerman
General Counsel

RWG:mco