

AUG 22 1975
L 75 - 356

M-39

Mr. B. K. Satterfield
Assistant Vice President
and Trust Officer
The First National Bank of Bluefield
Post Office Box 1559
Bluefield, West Virginia 24701

Dear Mr. Satterfield:

This is in reply to your letter of July 24, 1975, in which you inquired whether employees covered by either the Norfolk and Western Railway Company private pension plan or the supplemental annuity provision of the Railroad Retirement Act would be eligible to establish an individual retirement account under the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001, et seq.) and certain recent amendments to the Internal Revenue Code (26 U.S.C. § 219, et seq.).

You stated that many of your potential customers are employees of the Norfolk and Western Railway Company and that this railroad has a private pension plan, but that you do not know the method by which this pension plan is funded. You also stated that you know that the Railroad Retirement Act provides for a supplemental annuity to be awarded to railroad employees under certain circumstances. It appears that you want to know whether active participation by an individual in either or both of the above retirement programs would render that individual ineligible to partake of the tax advantages associated with an individual retirement account.

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% of earned income (whichever is less) for cash contributions made by individuals into an approved personal retirement program.

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

Mr. B. K. Satterfield

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.

The Norfolk and Western Railway Company has two private pension programs which are separate from the benefits provided under the Railroad Retirement Act. The Supervisor of Pensions for that railroad advises that the first program covers only employees who are not subject to the railroad's collective bargaining agreement, and that this program is funded by employer contributions only. In addition, the railroad has a "Plan for Supplemental Pensions," which covers only bargaining unit employees who were employed as of June 1, 1962. This latter program is a contributory pension program. The Supervisor of Pensions characterizes both of the foregoing programs as "qualified" plans under the Internal Revenue Code.

On the basis of the foregoing, it appears that employees of the Norfolk and Western Railway Company who are covered by either of these pension programs would be ineligible to enjoy the tax advantages associated with an "individual retirement account." It should be noted that not all bargaining unit employees are covered by such a program. If you have any questions concerning the provisions of the foregoing private pension programs or their application to any specific individual, you should contact Mr. W. C. Bowman, Manager of Employee Benefits, Norfolk and Western Railway Company, Roanoke, Virginia 24022.

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,

Mr. B. K. Satterfield

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.

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

Very truly yours,

Dale G. Zimmerman
General Counsel

cc: Mr. W. C. Bowman
Manager of Employee Benefits
Norfolk and Western Railway Company
Roanoke, Virginia 24022

ENG:aco