

Mr. Glenn H. Fuller
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70 Meadowview, Suite 250
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SEP 8 1977
L 77 - 541

Dear Mr. Fuller:

This is in reply to your letter of June 9, 1977, in which you inquired as to whether a Consolidated Rail Corporation employee's participation in a "supplemental program" would render that employee ineligible to establish an Individual Retirement Account.

As you know, your inquiry relates to the "Retirement Savings" provisions of the Employee Retirement Income Security Act of 1974 and to certain amendments of the Internal Revenue Code. Under these provisions, which became effective on January 1, 1975, 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 personal retirement program.

In this regard, it must be noted that the Railroad Retirement Board is an independent agency in the executive branch of the United States Government to which Congress has delegated all the duties and powers necessary to administer the Railroad Retirement Act (45 U.S.C. § 231, et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351, et seq.). The Board plays no role in the administration of the Employee Retirement Income Security Act, and only the Internal Revenue Service can provide an authoritative answer to the type of question which you have posed. However, it is my opinion that coverage under the Railroad Retirement Act, including receipt of a supplemental annuity under section 2(b) of that Act, does not render an employee ineligible to establish an Individual Retirement Account and to enjoy the tax advantages associated with such an Account. The supplemental annuity program of the Railroad Retirement Act is an integral part of the railroad retirement system and, like other benefits provided by that Act, is supported by special employment taxes levied under authority of the Railroad Retirement Tax Act.

It appears, however, that the "supplemental program" about which you are concerned is not the supplemental annuity program of the Railroad

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Retirement Act. Rather, it seems that it is a private retirement plan established by a particular railroad employer, and that the benefits payable under that program are integrated with the benefits which are payable to the employee under the Railroad Retirement Act. If a railroad employee is covered by a private pension plan in addition to the railroad retirement system administered by the Board, the private plan might render the employee ineligible to enjoy the tax advantages associated with an Individual Retirement Account. Of course, such a determination could be made only by the Internal Revenue Service following an examination of the private pension plan in question.

I regret that I am unable to make any further response to the question which you posed.

Very truly yours,

Dale G. Zimmerman
General Counsel

JRS:das