



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

December 22, 2010

Number: **2011-0002**
Release Date: 3/25/2011

CC:TEGE:EOEG:ET1
CONEX-143915-10

UIL: 3201.00-00

Dear _____ :

I apologize for the delay in responding to your letter dated July 08, 2010. You requested information on claims for refund of excess Tier I and Tier II Railroad Retirement Tax Act (RRTA) taxes withheld from the compensation of employees who are employed by multiple railroad employers.

In general, under the RRTA, railroad employment is subject to a separate and distinct system of taxes from the taxes imposed under the Federal Insurance Contributions Act (FICA), which covers most other employees. Parts of the RRTA system are the responsibility of the Internal Revenue Service, and parts of the system are the responsibility of the U.S. Railroad Retirement Board (RRB), an independent agency of the federal government.

Under RRTA, "compensation" is subject to two levels of taxes, or tiers. One tier provides equivalent social security and Medicare benefits (Tier I), and the other tier provides a private pension benefit (Tier II). The law defines compensation for purposes of RRTA and excludes the portion of remuneration for employment an employer paid during any calendar year to an individual that exceeds the "applicable base." See sections 3231(e) and 3231(e)(2)(A) of the Internal Revenue Code (the Code). There is no maximum on earnings subject to Tier 1 tax at the 1.45 percent rate for Medicare. See section 3231(e)(2)(A)(iii) of the Code.

Tier I benefits are financed by Tier I taxes imposed under section 3201(a) of the Code (for employees) and section 3221(a) of the Code (for employers). The same tax rates apply to employers and employees. The Tier I tax rate is 7.65 percent (6.2 percent for railroad retirement and 1.45 percent for Medicare). Tier I uses the same annual contribution and benefit base as the social security wage base for earnings subject to the 6.2 percent rate. Accordingly, for purposes of Tier I taxes, section 230 of the Social Security Act determines the "applicable base" for such calendar year. See section 3231(e)(2)(B)(i) of the Code. For 2010 and 2011, the social security wage base is \$106,800. Therefore, an employer should only withhold and pay Tier I taxes in 2010 and 2011 on compensation the employer paid up to \$106,800.

Tier II benefits are financed by Tier II taxes imposed under section 3201(b) of the Code (for employees) and section 3221(b) of the Code (for employers). We compute Tier II tax rates annually in accordance with the tax rate schedule provided in section 3241(b) of the Code and base them on an average account benefits ratio the RRB computes. For 2011, the Tier II tax rate on employees is 3.9 percent of compensation, and the Tier II tax rate on employers is 12.1 percent of compensation (Volume 75 of the Federal Register 73166). A separate annual base, sometimes referred to as the “old-law” contribution and benefit base, applies to the Tier II tax. See section 3231(e)(2)(B)(ii) of the Code. The “old-law” contribution and benefit base is the base that would have been effective without the enactment of the 1977 amendments to the Social Security Act. Accordingly, for purposes of Tier II taxes, the applicable base is determined under section 230(b) of the Social Security Act as it read prior to the 1977 amendments. The “old-law” contribution and benefit base for 2010 and 2011 is \$79,200. Therefore, an employer should only withhold and pay Tier II taxes in 2010 and 2011 on compensation it paid up to \$79,200.

Employees who receive compensation from multiple employers and whose combined wages exceed the applicable bases effective for the calendar year are entitled to a credit or refund of the employee tax which exceeds the amount of Tier I and Tier II taxes imposed on the applicable bases. Special rules apply to the excess Tier I tax. See section 6413(c) of the Code. Employees claim refund or credit of excess Tier I RRTA tax resulting from having multiple employers on Form 1040, U.S. Individual Income Tax Return (line 69 of the 2010 Form 1040). See Treasury Regulations sections 1.31-2(a)(2) and 31.6413(c)-1(b)(1). The employee’s Forms W-2 from each employer supports his or her entitlement to the refund. Employees not required to file income tax returns can claim refund or credit of excess Tier I RRTA tax resulting from having multiple employers on Form 843, Claim for Refund and Request for Abatement. See Treasury Regulations sections 1.31-2(a)(2) and 31.6413(c)-1(b)(2).

Under the general rules for refund claims under section 6402 of the Code, employees claim refund or credit of excess Tier II RRTA tax resulting from having multiple employers on Form 843. A claim for excess Tier II RRTA tax on Form 843 must include copies of the employee’s Forms W-2 for the year for which they are making the claim for refund. See the Instructions for Form 843.

This letter sets forth certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Revenue Procedure 2010-1, section 2.04, 2010-1 C.B. 1 (Jan. 4, 2010). I hope this information is helpful to you. If you have any additional questions, please contact _____ of my office at _____.

Sincerely,

Janine Cook
Branch Chief, Employment Tax Branch 1 (Exempt
Organizations/Employment Tax/Government
Entities)(Tax Exempt & Government Entities)