

Partition of Annuities by Court Decree

FORM G-177d (11-87)

Information on this form is provided to assist individuals in partitioning Railroad Retirement Act annuities in connection with certain court related property settlements.

1. Annuities under the Railroad Retirement Act are composed of independently calculated segments known as "tiers". Tier I is calculated using social security benefit formulas and includes both earnings in the railroad industry and in employment covered by the Social Security Act. Tier II is based on railroad retirement earnings alone. An employee may also receive a "supplemental annuity" ranging from \$23.00 to \$43.00 per month. Finally certain employees insured under both the Railroad Retirement Act and the Social Security Act as of 1974 may receive a vested dual benefit component.

2. The United States Supreme Court has previously held that section 14 of the Railroad Retirement Act (45 U.S.C. § 231m) prohibited a court from awarding one spouse a property interest in any benefits, whether present or expected in the future, to which the other spouse may become entitled under the Railroad Retirement Act. *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979).

3. However, Public Law 98-76 amended section 14 with respect to benefits payable for months after August 1983, by adding new section 14(b)(2). The Board has published regulations implementing section 14(b)(2) at Title 20 of the Code of Federal Regulations, Part 295. The Board will honor a decree of divorce, legal separation or annulment (or a court-approved property settlement incident to such a decree) which complies with these regulations. The following provisions in particular are noteworthy:

- (a) The decree must be final, and issued in accordance with the laws of the jurisdiction of that court (20 CFR 295.2).
- (b) The decree must provide for the division of the employee's benefits under the Railroad Retirement Act, as distinguished from payments under any private pension (20 CFR 295.3 (a)(1)).
- (c) The decree must provide for the division of the employee's benefits as part of a final disposition of property between the parties, rather than as an award of spousal support (20 CFR 295.2).
- (d) The decree must obligate the Railroad Retirement Board rather than the employee to make direct payments to the spouse (20 CFR 295.3(a)).
- (e) The decree may not divide the tier I amount (20 CFR §§ 295.1(b) and 295.5(a)). The Board applies a property award only to the employee's non-tier I benefits without regard to the wording of the decree (20 CFR 295.4(b)).

(f) The Board's Bureau of Law in Chicago must receive a properly worded decree (20 CFR 295.3(d)).

4. A decree may state the award as a dollar amount or as a fraction of the employee's benefits subject to division. The Board will deduct any amount or fraction allowed under state law, but the Board cannot deduct an amount greater than the total benefits subject to division payable to the employee for any month.

5. A model paragraph for a decree which complies with the Board's regulations and which awards to each spouse an equal share of divisible benefits proportionate to the period of the marriage is as follows:

"(Spouse's name) is awarded, and the Railroad Retirement Board is directed to pay, an interest in the portion of (Employee's name) benefits under the Railroad Retirement Act (45 U.S.C. § 231, et seq.) which may be divided as provided by section 14 of that Act (45 U.S.C. § 231m). (Spouse's name) share shall be computed by multiplying the divisible portion of (Employee's name) monthly benefit by a fraction the numerator of which is the number of years (Employee's name) worked for a railroad employer during the period of the marriage (month/year through month/year), and the denominator of which shall be (Employee's name) total number of years employed by a railroad employer at retirement, and then dividing the product by two."

6. A certified copy of any decree awarding the spouse an interest in the employee's benefits should be forwarded to the Deputy General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092. Any correspondence should refer to the employee's social security number, and contain the current address of both parties or their counsel.

7. Deductions from the employee's annuity pursuant to the decree begin the later of the first month in which the employee is entitled to benefits from the Board (20 CFR 295.5(a)), or the month the Bureau of Law receives the decree (20 CFR 295.5(c)).

8. In addition to any portion of the employee's benefit awarded by the court as described above, the spouse or former spouse may become eligible for a divorced spouse or surviving divorced spouse benefit in his or her own right under sections 2(c)(4) and 2(d)(1)(v) of the Act (45 U.S.C. §§ 231a(c)(4), 231a(d)(1)(v)). Entitlement to this benefit is a matter of Federal law which cannot be modified by state courts. The Board will disregard any mention in the decree of the divorced spouse or surviving divorced spouse benefit (20 CFR 295.1 (b)).

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