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Rev. Rul. 79-305

ISSUE

Is the fair market value of property transferred to an employee wages for purposes of sections 3121(a), 3306(b), and 3401(a) of the Internal Revenue Code at the time the substantial risk of forfeiture on the property lapses and it is includible in gross income under section 83(a)?

FACTS

A corporation transferred some of its common stock, subject to a substantial risk of forfeiture, to one of its key employees. Prior to the lapse of the substantial risk of forfeiture the stock was not transferable. The employee made no election to include the fair market value of the stock in gross income in the year of transfer as provided in section 83(b) of the Code.

The risk of forfeiture lapsed in a later year, and the stock had appreciated in value from the time of the transfer to the time of the lapse of the risk of forfeiture.

LAW AND ANALYSIS

Section 83(a) of the Code provides that if, in connection with the performance of services, property is transferred to any person other than the person for whom the services are performed, the person who performs the services must include in gross income the excess of the fair market value of such property at the first time the rights of the person having the beneficial interest in the property become transferable or are not subject to a substantial risk of forfeiture over the amount (if any) paid for the property.

Sections 3121(a) and 3306(b) of the Code define the term "wages," with certain exceptions not material here, as all remuneration for employment. Section 3401(a) of the Code, relating to income tax withholding, contains a similar definition.

Sections 31.3121(a)-1(e), 31.3306(b)-1(e), and 31.3401(a)-1(a)(4) of the Employment Tax Regulations provide that, generally, the medium in which the remuneration is paid is immaterial and the remuneration may be paid in cash or something other than cash. Under sections 31.3121(a)-1(e) and 31.3306(b)-1(e), remuneration paid in items other than cash shall be computed on the basis of the fair value of such items at the time of payment. Section 31.3401(a)-1(a)(4) specifies that if a corporation transfers to its employees its own stock as remuneration for services rendered, the amount of such remuneration is the fair market value of the stock at the time of transfer.

The transfer of stock mentioned in section 31.3401(a)-1(a)(4) of the regulations refers to the transfer of an item of noncash remuneration not subject to substantial limitations or restrictions.

Section 31.3121(a)-2 of the regulations provides that wages are paid by an employer at the time they are actually or constructively paid, with certain exceptions not material here. To be a constructive payment, the wages must be credited to or set apart for the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which

payment is to be made, and must be made available so that they may be drawn upon at any time, and their payment brought within the employee's own control and disposition. Sections 31.3301-4 and 31.3402(a)-1(b) contain similar provisions.

HOLDINGS

Pursuant to the provisions of section 83(a) of the Code, the fair market value of the transferred stock at the time the risk of forfeiture lapsed is includible in the employee's gross income for the year in which the risk lapses.

Furthermore, when the risk lapsed the stock was made available to the employee without any substantial limitation or restriction and was available to be used by the employee at any time. Therefore, the fair market value of the stock at that time is wages for purposes of sections 3121(a), 3306(b), and 3401(a) of the Code. Text:

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board <Page 360> has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each man-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning October 1, 1979, shall be at the rate of twelve and one-half cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974 [Pub. L. 93-445, 1974-2 C.B. 440], the Railroad Retirement Board has determined that for the quarter beginning October 1, 1979, 18.7 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 81.3 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus one hundred percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated August 16, 1979.

By Authority of the Board.

R. F. Butler,

Secretary of the Board.

(Filed by the Office of the Federal Register on August 22, 1979, 8:45 a.m., and published in the issue of the Federal Register for August 23, 1979, 44 F.R. 49538)

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each man-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 1980, shall be at the rate of twelve and one-half cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974 [Pub. L. 93-445, 1974-2 C.B. 440], the Railroad Retirement Board has determined that for the quarter beginning January 1, 1980, 19.8 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 80.2 percent of the taxes collected under such Section 3211(b) and 3221(c) plus one hundred percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

By Authority of the Board.

Dated November 19, 1979.

R. F. Butler,

Secretary of the Board.

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