Office of Chief Counsel
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Memorandum

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subject: Equity Compensation

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

The Taxpayer =
Year 1 =
Year 2 =

ISSUE

Whether "compensation" under the Railroad Retirement Tax Act (RRTA) includes the value of stock and stock options.

CONCLUSION

"Compensation" under RRTA includes the value of stock and stock options.

FACTS

The Taxpayer compensated employees with Taxpayer stock or stock options in the years Year 1 through Year 2.[1] The Taxpayer argues that these stock payments are not subject to RRTA tax, because the definition of "compensation" for RRTA tax purposes does not encompass stock and other equity compensation. The Taxpayer seeks a refund for the RRTA tax it paid on such payments.

LAW

The Railroad Retirement Tax Act

RRTA imposes a tax on all employers and employees with respect to a percentage of compensation that employers pay to employees in exchange for services. §§ 3201, 3211. Employees who pay tax under RRTA are ultimately eligible for railroad retirement benefits under the Railroad Retirement Act (RRA).

Railroad retirement benefits fall under a two-tiered structure. Tier 1 benefits operate analogously to social security benefits. The Tier 1 tax rate is tied to the FICA tax rate. Thus, as of 2008, both employers and employees had to pay RRTA tax at a rate of 6.20 percent, up to the $102,000 maximum taxable wage base. Tier 2 benefits are designed to resemble a comparable private defined benefit pension.[2]

Railroad employees are also eligible for Medicare. Both employers and employees subject to RRTA must pay Medicare tax at a rate of 1.45 percent. The Omnibus Budget Reconciliation Act of 1993 removed the Medicare maximum taxable wage base for those subject to RRTA (at the same time that it removed the parallel taxable wage for base for those subject to FICA). *See* Pub. L. 103-66, 107 Stat. 312 (1993).

As discussed later in more detail, Congress enacted RRTA during the 1930s.[3] As the Great Depression exposed private railroad pension plans' shortcomings, Congress

[1] Taxpayer's refund claims refer to "stock/equity compensation" and contain no facts regarding the specific nature and terms of the stock or other equity compensation provided to its employees. Accordingly, for purposes of this memo, we assume the "stock/equity compensation" provided was stock and stock options in Taxpayer.

[2] RRTA requires employers to pay RRTA Tier 2 taxes at a rate of 12.10 percent, while employees must pay RRTA Tier 2 taxes at a rate of 3.90 percent. Tier 2 rates can fluctuate, though, based on RRB asset levels. As of 2008, the maximum taxable wage base for Tier 2 benefits was $75,900.

[3] Congress first enacted federal railroad retirement legislation in 1934. The Supreme Court, however, invalidated this legislation the following year. Railroad Retirement Board v. Alton R. Co., 295 U.S. 330 (1935). Later in 1935, Congress again tried to create a federal railroad retirement system when it passed the Railroad Retirement and Carriers' Taxing Acts. Legal challenges invalidated this legislation, too, when a federal district court declared that it was unconstitutional for Congress to compel railroad employees and employers to pay industry-specific retirement taxes. Alton R. Co. v. Railroad Retirement Board, 16 F. Supp. 955 (D.C. Cir. 1936). Congress' efforts to establish a national railroad retirement

intended for RRTA to fund a federal railroad retirement program to provide railroad workers with old age and disability benefits. *See generally* Kevin Whitman, *An Overview of the Railroad Retirement Program*, SOCIAL SECURITY BULLETIN, Oct. 1, 2008.

RRTA imposes taxes on "compensation" as that term is defined in § 3231(e)(1). Section 3231(e)(1) defines the term as "any form of money remuneration paid to an individual for services rendered as an employee to one or more employers," with certain enumerated exceptions.

Congress has amended RRTA several times to exclude several types of payments from this definition of compensation, including:

- Certain sickness and disability benefits (§ 3231(e)(1)(i));
- Certain employer-provided deferred compensation, cafeteria, and related plans (§ 3231(e)(1)(iv));
- Certain employee achievement awards excludable from income under § 74(c) (§ 3231(e)(5);
- Certain student loan repayments excludable from income under § 108(f)(4) (§ 3231(e)(5);
- Scholarships and fellowships excludable from income under § 117 (§ 3231(e)(5));
- Employer-provided educational assistance excludable from income under § 127 (§ 3231(e)(6)); and
- Benefits under a qualified group legal services plan excludable from income under § 120 (§ 3231(e)(7)).

Congress has also amended RRTA to exclude certain types of noncash payments from its definition of compensation.

In 1984, Congress enacted § 3231(e)(5), which excluded the value of certain employer-provided fringe benefits from compensation. The provision stated that it excluded:

> "any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under . . . 132."

In 1989, Congress enacted § 3231(e)(9), which excluded the value of certain employer-provided meals and lodging from compensation. In particular, the provision excluded:

> "the value of meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119."

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program were finally successful with passage of the revised Railroad Retirement and Carriers' Taxing Acts in 1937.

And, in 2004, Congress enacted § 3231(e)(12), which excluded the value of certain qualified stock options (and their dispositions) from compensation. More specifically, the provision excluded:

> "remuneration on account of--(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or (B) any disposition by the individual of such stock."

Treasury regulations define compensation under RRTA by reference to "wages" under the Federal Insurance Contributions Act (FICA). In particular, Treas. Reg. § 31.3231(e)-1 states:

> The term compensation has the same meaning as the term wages in section 3121(a), determined without regard to section 3121(b)(9), except as specifically limited by the Railroad Retirement Tax Act (chapter 22 of the Internal Revenue Code) or regulation.[4]

In Rev. Rul. 69-391, the Service stated that compensation under RRTA includes the value of employer-provided noncash compensation (i.e., housing accommodations) if the employer and employee have agreed that this noncash compensation has an appropriate fixed value and it is part of the employee's total remuneration.

The Federal Insurance Contributions Act

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[4] In the preamble to Treas. Reg. § 31.3231(e)-1, the Service made clear that this regulation's purpose was to memorialize its long-standing view that compensation under RRTA and wages under FICA are congruent:

> Legislation enacted since the adoption of the existing regulations has made the RRTA Tier 1 tax identical to the FICA tax as well as conforming the Tier 1 wage ceiling to the FICA wage ceiling. Along with conforming the structure of the RRTA to parallel that of the FICA, the exclusions from the definition of compensation under the RRTA, with few exceptions, mirror the exclusions from the definition of wages under the FICA. These exclusions from compensation include non-monetary benefits such as fringe benefits, meals and lodging excludable under section 119 of the Internal Revenue Code, and employer-paid life insurance premiums for group-term life insurance under $50,000. In amending RRTA, Congress often indicated the purpose was to provide conformity to FICA. Congress has added references to FICA provisions in the RRTA definition of successor employer (section 3231(e)(2)(C)) and the rules for nonqualified deferred compensation (section 3231(e)(8)). In addition, Tier 1 benefits are designed to be equivalent to social security benefits and are subject to federal income taxation in the same manner as social security benefits. Because the two statutes are not completely identical, the language of the regulation indicates that the term compensation has the same meaning as the term wages, except as specifically limited by the Railroad Retirement Tax Act.
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> T.D. 8582, 1995-1 C.B. 187.

FICA imposes a tax on all employers and employees with respect to a percentage of wages that employers pay to employees in exchange for services. §§ 3101, 3111. Employees who pay tax under FICA and accumulate sufficient quarters of coverage are ultimately eligible for social security retirement benefits under the Social Security Act (SSA).

Employees subject to FICA are also eligible for Medicare. Both employers and employees subject to FICA must pay Medicare tax at a rate of 1.45 percent.

As discussed later in more detail, Congress enacted FICA during the 1930s.[5] As the Great Depression left many retired workers without means, Congress intended for FICA to fund a federal old age and disability entitlement program. *See generally* Social Security Administration, Historical Development and Background of Social Security, http://www.ssa.gov/history/briefhistory3.html (March 2003).

As noted, Treas. Reg. § 31.3231(e)-1 links "compensation" under RRTA to "wages" under FICA. Section 3121(a) defines "wages" for FICA purposes as "all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash," with certain enumerated exceptions.

Congress has amended FICA, like RRTA, several times to exclude several forms of payments from this definition of "wages," including:

- Certain sickness and disability benefits (§ 3121(a)(2));
- Certain employer-provided deferred compensation, cafeteria, and related plans (§ 3121(a)(5));
- Certain employee achievement awards excludable from income under § 74(c) (§ 3231(e)(5);
- Certain student loan repayments excludable from income under § 108(f)(4) (§ 3231(e)(5);
- Scholarships and fellowships excludable from income under § 117 (§ 3231(e)(5));
- Employer-provided educational assistance excludable from income under § 127 (§ 3231(e)(6)); and
- Benefits under a qualified group legal services plan excludable from income under § 120 (§ 3231(e)(7)).

Congress has also amended FICA to exclude certain types of noncash payments from its definition of wages.

[5] Congress enacted the predecessor provisions of FICA in 1935. Social Security Act of 1935, ch. 531, 49 Stat. 636.

In 1983, Congress enacted § 3121(a)(19), which excluded the value of certain employer-provided meals and lodging from wages. In particular, the provision excluded:

> "the value of meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119."

In 1984, Congress enacted § 3121(a)(20), which excluded the value of certain employer-provided fringe benefits from wages. The provision stated that it excluded:

> "any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under . . . 132."

And, in 2004, Congress enacted § 3121(a)(22), which excluded the value of certain qualified stock options (and their disposition) from wages. More specifically, the provision excluded:

> "remuneration on account of--(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or (B) any disposition by the individual of such stock."

The RRTA and FICA exclusions with respect to qualified stock options are the same.

Regulations indicate that wages is a broad, form-indifferent concept. Treas. Reg. § 31.3121(a)-1(e) states:

> Generally the medium in which the remuneration is paid is . . . immaterial. It may be paid in cash or in something other than cash, as for example, goods, lodging, food, or clothing. 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.

The Service has consistently maintained the position that employer-provided stock payments are wages subject to FICA. *See* Rev. Rul. 79-305, 1979-2 C.B. 350 (Company transfer of common stock to an employee results in wages for FICA purposes equal to stock's fair market value at the time any substantial limitation or restriction on the stock lapses). *See also*, Rev. Rul. 78-185, 1978-1 C.B. 304 (excess of stock's fair market value on date it was credited to an employee's account over amount of the employee's contributions was wages for purposes of FICA).

ANALYSIS

Based on both congressional intent and principles of statutory interpretation, we conclude that compensation for purposes of RRTA means all payments for services, regardless of the form of payment, except for those items explicitly excepted by statute. That is the interpretation provided in Treas. Reg. § 31.3231(e)-1. As this is a reasonable interpretation of an ambiguous statutory term, under existing case law, the regulation is entitled to deference.

Compensation is defined in RRTA as "any form of money remuneration." We interpret the term "money remuneration" as including both cash and noncash compensation after first determining that the statute has no plain meaning and then considering the term in the context of the statute as a whole, the legislative history, and general principles of statutory construction.

Absence of Plain Meaning for the Term "Money Remuneration"

Interpretation of statutory language starts with the plain meaning of the words themselves. That is, "unless there is some ambiguity in the language of a statute, a court's analysis must end with the statute's plain language." *See, e.g.*, *Hillman v. I.R.S.*, 263 F. 3d 338, 342 (4th Cir. 2001) (citing *Caminetti v. United States*, 242 U.S. 470 (1917)). Although Taxpayer has asserted that "money" in "money remuneration" means cash, there are many reasons to conclude that the meaning of money is ambiguous.

To start, RRTA itself never defines money. The dictionary's definitions of the noun form of "money" include (1) "property considered with reference to its pecuniary value," (2) "wealth considered in terms of money," (3) "pecuniary profit," and (4) "any circulating medium of exchange, including coins, paper money, and demand deposits." WEBSTER'S UNABRIDGED DICTIONARY 1241 (2d ed. 2001). When used as an adjective, the dictionary defines money as (1) "of or pertaining to money," (2) "used for carrying, keeping, or handling money," or (3) "of or pertaining to capital or finance." *Id.*

Looking to how money is used as an adjective elsewhere in the Internal Revenue Code—as it is used in § 3231(e)(1)—generally favors the broader definition rather than the narrow cash definition, but still leaves ambiguity. For example, § 6050I uses money as an adjective in the phrase "money laundering." This section defines money laundering by reference to 18 U.S.C. § 1956, indicating that money laundering can include stock transactions.[6]

Other Code provisions indicate that the noun use of money can refer to a subset of property. These provisions include §§ 80(a) ("money or other property"), 118(c) ("money or other property"), 170 (referring to "money or other property" several times), 301(b) ("money received, plus the fair market value of the other property received"),

[6] 18 U.S.C. § 1956 explicitly encompasses "the purchase or sale of any stock." 18 U.S.C. 1956(c)(3) (2000).

317(a) (defining "property" as "money, securities, and any other property"); 732(a)(1) ("property (other than money)"), 465 ("property other than money"), 751(b) ("property (including money)"), and 301(b)(1) ("amount of money received plus the fair market value of the other property received"). By contrast, certain provisions of the Code imply that money is mutually exclusive of property. Among these sections are §§ 141(b)(2)(B) ("property, or borrowed money") and 172 ("money or property other than stock").[7] In the partnership context, § 731(c)(1)(A) states that "the term 'money' includes marketable securities."[8] This example can support the view that money is a broad category that can properly describe more than cash or it can be used to argue that money has a narrow meaning, and specific language is required to broaden it.
In sum, the term "money remuneration" does not have a single plain consistent meaning in the Code or in general usage. Therefore, it is an ambiguous term. A sound reasonable interpretation of the term, therefore, depends on its statutory context in § 3231, RRTA's legislative history, and general principles of statutory construction.

Statutory Context, Legislative History, and Congressional Intent to Parallel FICA

Congress generally intended for compensation under RRTA to have the same scope as wages under FICA. Conceptually, RRTA and FICA are indistinguishable. They (1) were enacted at the same time, (2) were enacted for the same purpose, and (3) operate in the same way. In particular, Congress enacted both programs during the Great Depression era. Both programs funded analogous federal old age and disability programs: RRTA funded the RRA, while FICA funded the SSA. Both operate by simultaneously imposing an excise tax on employers and a withholding tax on employees. In fact, RRTA's Tier 1 tax rate and compensation base are identical to FICA's tax rate and wage base.

Congress separately enacted RRTA/RRA and FICA/SSA because they fund separate retirement programs. Furthermore, Congress enacted the RRA and SSA separately because the RRA *federalized* an existing pension system, while the SSA *created* a pension system. Railroad retirees had unusual circumstances during the 1930s. By this time, the railroad industry had the nation's most well-developed private pension system. In fact, employers with private pension plans employed approximately 80 percent of railroad workers. However, these plans had shortcomings and general

[7] Nor do treasury regulations clearly indicate whether the word money in RRTA encompasses noncash forms of compensation. Regulations under § 83 indicate that property and money are mutually exclusive. In particular, Treas. Reg. § 1.83-3(e) states that, "For the purposes of section 83 and the regulations thereunder, the term 'property' includes real and personal property other than either money or an unfunded and unsecured promise to pay money or property in the future." But it is notable that, by its very terms, this provision explicitly does not define money for the purposes of any other section of the Code. And, as will be discussed later, the result of extrapolating from this regulation that money does not include stock, and then exporting that meaning to § 3231(e), is a reading of RRTA that (1) violates several principles of statutory interpretation, and (2) contradicts Congress' intent.
[8] The House Report accompanying this amendment indicates that this amendment was intended to close a tax loophole "by ensuring that partnerships cannot avoid gain to their partners by distributing marketable securities instead of cash." H.R. REP. 103-826(I) (1994).

inadequacies. As the Depression exposed the nation's general inability to cope with its growing population of elderly citizens, it also exposed these railroad plans' instabilities. Congress, therefore, decided to federalize the railroad retirement system. The SSA, which was created at the same time, was not suited to cover the railroad industry because it did not cover work performed before 1937, and Congress did not schedule it to begin paying benefits for several years. *See generally* Kevin Whitman, *An Overview of the Railroad Retirement Program*, SOCIAL SECURITY BULLETIN, Oct. 1, 2008. Congress therefore enacted the RRA and SSA separately.

Although there is no clear explanation in the statute or legislative history for why RRTA defines compensation as "any form of money remuneration paid to an individual for services rendered as an employee," § 3231(e)(1), when FICA defines wages as "all remuneration for employment," § 3121(a), the difference can be understood as reflecting historical circumstance. Railroad workers received benefits that workers in other industries did not receive, such as free transportation. RRTA's author, Representative Robert Crosser, was keenly aware of these benefits when he observed during hearings that proceeded RRTA's enactment that railroad workers enjoyed several "special advantages," including "safety appliances and safety precautions assured by law" and "free transportation." *Taxation of Interstate Carriers and Employees: Hearings on H.R. 8652 Before the H. Comm. on Ways and Means*, 74th Cong. 9 (1935) (statement of Rep. Robert Crosser). At the time RRTA and FICA were enacted, the Internal Revenue Code did not yet address such "special advantages." Over time, as benefits of this type became more widespread, Congress amended the Code to address fringe benefits expressly. Congress finally enacted § 132 in 1984 to address the taxation of non-monetary fringe benefits such as employee discounts and no-additional cost services. Including the phrase "money remuneration" in RRTA itself, however, had the effect of clarifying that RRTA was intended to be on par with FICA and was not intended to include fringe benefits like free railroad travel in compensation.

Subsequent congresses have affirmatively indicated that RRTA compensation is intended to track with wages for FICA purposes. Thus, as wages for FICA encompass noncash forms of compensation, so does compensation for RRTA purposes. For example, the conference committee report accompanying the Deficit Reduction Act of 1984 summarized how RRTA values noncash compensation, stating in particular:

> The Railroad Retirement Tax Act (RRTA) applies to any form of money remuneration (Sec. 3231(e)). Regulations applicable to these statutes [FICA, FUTA, RRTA, and income tax withholding] specify that the value of any noncash item is to be determined by the excess of its fair market value over any amount paid by the recipient for the item . . . .[9]

[9] In this same Act, Congress amended the definition of "wages"—but not the definition of "compensation"—to explicitly include benefits. As we discuss later, we do not believe that Congress intended for this omission to exclude noncash forms of remuneration from RRTA.

Also relevant in this regard are Congress' adoptions of § 3231(e)(9)'s and (e)(12)'s exclusions of certain noncash payments from RRTA's definition of "compensation". Section 3231(e)(9) excludes the value of certain employer-provided meals and lodging, while § 3231(e)(12) excludes the value of certain employer-provided stocks and stock options. Implying that Congress saw the need to direct RRTA's treatment of compensation provided in noncash form, these amendments would not have been necessary if money remuneration inherently excluded noncash compensation.

Congress has repeatedly amended the definitions of FICA wages and RRTA compensation in parallel. In 1984, Congress amended the definition of FICA wages and RRTA compensation to exclude benefits that are excludable from an employee's gross income under §§ 74(c) (certain employee achievement awards), 108(f)(4)(certain student loan repayments), 117 (scholarships and fellowships), or 132 (fringe benefits). In 2004 Congress added an exclusion for qualified stock options to the definitions of both FICA wages and RRTA compensation. In 1983, in response to *Rowan Companies, Inc. v. United States*, 452 U.S. 247 (1981) which was a FICA case, Congress excluded from FICA wages meals and lodging that are excludable from gross income under § 119. In 1989, Congress added a parallel exclusion to RRTA compensation. Although the legislative history does not provide an explanation, it does describe the change in the FICA law as the relevant legal background. Congress also indicated that it views compensation and wages interchangeably when it made RRTA Tier 1 and FICA tax rates identical for both employers and employees in 1965.[10] As of 2008, both rates were 6.20 percent of retirement earnings up to $102,000, and 1.45 percent of all Medicare earnings.

Congress has included a special minimum guarantee provision in the RRA that ensures that railroad families will not receive less in monthly benefits than they would have received if they were covered by the SSA rather than the RRA. Also, 1951 amendments to the RRA made the RRA and SSA financially interchangeable, providing the Social Security Administration with tax revenues that would otherwise be collected directly from railroad workers, while the Social Security Administration provided to the Railroad Retirement Board the funds that would otherwise be paid directly to railroad workers. Finally, Congress has subjected both SSA and RRA benefits to identical levels of income taxation. § 86.

Meanwhile, courts have consistently viewed the Railroad Retirement Act statutory scheme and the Social Security Act statutory scheme as interchangeable. Courts use social security regulations and cases as precedent for railroad retirement matters. *See, e.g.*, *Elam v. Railroad Retirement Board*, 921 F. 2d 1210 (11th Cir. 1991) (holding that provisions of the Railroad Retirement Act are so closely analogous to those of the Social Security Act that regulations and cases interpreting the latter are applicable to the former); *Harris v. U.S. R.R. Retirement Board*, 198 F. 3d 139 (4th Cir. 1999) (stating

[10] RAILROAD RETIREMENT BOARD, RAILROAD RETIREMENT HANDBOOK 3 (2006), *available at* http://www.rrb.gov/pdf/opa/handbook.pdf.

that, because of similarities and overlapping authority between the Social Security Act and Railroad Retirement Act, it is accepted practice to use social security cases as precedent for railroad retirement cases).

In sum, congressional intent is clear from many sources in the statute itself and the legislative history from the time the statute was originally enacted through to the present day. Compensation for RRTA has the same scope as wages for FICA, except where specially limited by statute.[11]

General Principles of Statutory Construction

A "statute should be construed so that no part will be inoperative or superfluous." *See, e.g.*, *ErieNet, Inc. v. Velocity Net, Inc.*, 156 F.3d 513, 516 (3d Cir. 1998). Put differently, a statute should be construed so that all of its words are preserved and given force. *See, e.g.*, *Chickasaw Nation v. United States*, 534 U.S. 84, 85 (2001). Interpreting money remuneration as encompassing noncash forms of compensation, such as stock and stock options, preserves several portions of § 3231(e). First, this reading preserves the phrase "any form of" in § 3231(e)(1). Section 3231(e)(1) defines compensation, in part, as "any form of money remuneration." To interpret money as meaning only "cash" would be to say that remuneration can take only one form, which would conflict with the use of the phrase "any form of." Second, interpreting money remuneration as encompassing certain stock and stock options gives effect to § 3231(e)(12). Section 3231(e)(12) excludes from compensation certain employer-provided stock options (and their disposition). This exclusion would be unnecessary if "money remuneration" was limited to cash and by itself excluded stock options. Third, reading money remuneration to encompass more than cash preserves § 3231(e)(9). Section 3231(e)(9) excludes from compensation the value of certain employer-provided meals and lodging. To interpret money remuneration as inherently excluding noncash compensation would render this provision superfluous. Finally, this reading is consistent with a portion of § 3231(e)(5). Section 3231(e)(5), in part, excludes from compensation the value of noncash fringe benefits that are excludable under § 132. If money remuneration meant only cash compensation, then the exclusion for noncash fringe benefits covered by § 132 would be superfluous. Thus, reading "money remuneration" to include both cash and noncash compensation is necessary to give meaning to other parts of § 3231. Reading money remuneration this way does create a competing concern because it is not clear what meaning is then given to the term money as a modifier. However, as the statute does not use the term remuneration by itself, the term money does not have to distinguish one type of compensation from another. Therefore, the reading that

[11] Section 3121(a) excludes several forms of payments from "wages" that § 3231(e) does not exclude from "compensation". For example, FICA explicitly excludes "remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business or for domestic service in a private home of the employer," § 3121(a)(7)(A), "remuneration paid in any medium other than cash for agricultural labor," § 3121(a)(8), and "remuneration paid by an organization exempt from income tax under section 501(a)." § 3121(a)(16). These exceptions, by their terms, would not apply to remuneration for employment in the railroad industry.

reconciles money remuneration with the other parts of the same section seems to be the more reasonable reading.

Another principle of statutory construction presumes that different terms in a statute have different meanings. *See, e.g.*, *Legacy Emanuel Hosp. and Health Center v. Shalala*, 97 F.3d 1261, 1265 (9th Cir. 1996). As noted above, § 3231(e)(1) uses the word money. But § 3231(e)(3) uses the word "cash" when it subjects certain "cash tips received by an employee" to RRTA. A presumption therefore arises that Congress does not intend for money in § 3231(e)(1) to share cash's narrow meaning. The Deficit Reduction Act of 1984 (DEFRA) added the phrase "(including benefits)" to the definition of wages for FICA, FUTA, and income tax withholding—thus making it clear that these provisions encompass noncash forms of compensation—but not to RRTA. Congress' failure to add this phrase to RRTA could be read to imply that Congress did not intend for RRTA to encompass noncash forms of compensation. However, DEFRA also added § 3231(e)(5) to the definition of compensation for RRTA. Rather than being a signal that money remuneration is to be read more narrowly than wages for FICA purposes, the addition of § 3231(e)(5) reinforces the interpretation that compensation for RRTA and wages for FICA are to have the same scope. As discussed above, the use of the term "money remuneration" served at the time of enactment to ensure that certain types of fringe benefits like free transportation that were widely available to railroad workers were not taxable for RRTA purposes, so as to align compensation for RRTA and wages for FICA. At the same time, the Code did not address noncash fringe benefits like free transportation. Subsequently, DEFRA added § 132 to describe with precision which fringe benefits would be excluded from income. Section 3231(e)(5) is a refinement to this interpretation, ensuring that the fringe benefits excluded from compensation for RRTA are identical to those excluded from wages for FICA and further supporting the position that remuneration under RRTA includes noncash benefits.

Treas. Reg. § 31.3231(e)-1 is Entitled to Deference under Chevron

Treas. Reg. § 31.3231(e)-1 interprets "compensation" under RRTA to have the same meaning as "wages" under FICA, unless explicitly limited by statute. In particular, the regulation states that "[t]he term compensation has the same meaning as wages in section 3121(a)." As the regulation reflects a reasonable interpretation of an ambiguous statute for all the reasons set forth above, the regulation is entitled to deference under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

Chevron sets out a two-part test for whether regulations are entitled to deference when challenged in litigation. First, the statute interpreted by the regulations must be either silent or ambiguous with respect to matter that is the subject of interpretation. Second, the agency's interpretation must be reasonable. The Court in *Chevron* stated that that if the Agency chooses an interpretation of a statute that is "a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute," a court will disturb the interpretation only if "it appears from the statute or its legislative history

that the accommodation is not one that Congress would have sanctioned." *Chevron*, 467 U.S. at 845. As discussed at length above, the interpretation set forth in the regulation is consistent with the statute and its legislative history, not only at the time of enactment, but also as it has evolved over the subsequent decades.

In arguing for a competing interpretation, the taxpayer must also follow rules and principles of statutory interpretation. Although the taxpayer insists that *Chevron* deference does not apply because the meaning of the statute is clear, the taxpayer cannot defend that position where the taxpayer's reading of the statute violates multiple principles of statutory interpretation as discussed above. In *Walshire v. United States*, 288 F.3d 342 (8th Cir. 2001), the taxpayer argued that a Treasury regulation was not entitled to *Chevron* deference because it contradicted the taxpayer's reading of § 2518(c). The court, however, stated that the taxpayer's reading of § 2518(c) "violate[d] a fundamental rule of statutory interpretation to give effect to all words and phrases used in the statute." *Walshire*, 288 F.3d at 347. The court therefore held that the regulation was entitled to *Chevron* deference.

Thus, while the term "money remuneration" in the statute is ambiguous and, therefore, subject to more than one possible interpretation, Treas. Reg. § 31.3231(e)-1 reflects the interpretation that is consistent with the term in its statutory context and congressional intent that has been reaffirmed repeatedly through multiple amendments to the statute. The regulation provides a reasonable, and, in fact, the better interpretation of the statute. It is, therefore, entitled to deference.

CONCLUSION

Compensation under RRTA includes the value of stock and stock options.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please contact me at (202) 622-0047, or Syd Gernstein at (202) 622-6040, if you have any further questions.