

February 14, 1997  
L-97-6

**TO** : John L. Thoresdale  
Director of Policy and Systems

**FROM** : Steven A. Bartholow  
Deputy General Counsel

**SUBJECT** : The Metropolitan Transportation Authority  
Defined Benefit Pension Plan

This is in response to a memorandum dated August 19, 1996, requesting an opinion as to whether the above-referenced pension plan is a supplemental pension plan within the meaning of section 2(h)(2) of the Railroad Retirement Act. The plan, which is maintained by the Metro-North Commuter Railroad Company (BA No. 3345)("Metro-North"), covers the management employees of Metro-North and the Long Island Railroad (BA No. 1311).

This pension plan is a defined benefit plan under which requires Metro-North to contribute amounts necessary to maintain a sound actuarial basis for the plan (Articles III and VII). Although a defined benefit plan is a supplemental plan under the Board's regulations at 20 CFR 216.42(a), Article IV of the plan requires employee contributions which Metro-North may "pick up" through deductions from employee wages under section 414(h)(2) of the Internal Revenue Code (IRC). Although for tax purposes these "pick up" contributions are treated as employer contributions, under section 2(h)(2) of the Railroad Retirement Act they should be treated as employee contributions, since they are deducted from the employee's compensation. Any amount paid under the plan based on employee contributions would not reduce the supplemental annuity. Accordingly, although this plan does qualify as a supplemental pension under section 2(h)(2) of the Railroad Retirement Act, it would appear that a substantial portion of the benefit paid under the plan would be based upon employee contributions.

(See also L-97-5.LOP)