PART IV Particular Types of Compensation Payments

CHAPTER 1: Regular Earnings

Regular earnings definition

Regular earnings are payments made for services rendered as an employee. This includes payments to part-time and seasonal employees, as well as regular earnings paid to employees who are not working due to illness, injury, or pregnancy. Any payment made through the regular payroll system is presumed to be regular earnings. Regular earnings are creditable as follows:

National or System Unit	Tier I, Tier II, and RUIA compensation and service month credit.
Local Lodge	Tier I and Tier II compensation for payments of $25 or more per month and service month credit

Non-monetary earnings

Earnings may be paid as a commodity, a service, or a privilege. If an employee is to be paid in any form other than money, the employee and employer must agree upon the arrangement and the value of the commodity, service, or privilege being provided. Non-monetary earnings will result in creditable compensation. Non-monetary earnings are creditable in the amount of ascertainable or agreed upon value. For example, a local lodge may pay earnings in the form of union dues.

The language in the Railroad Retirement Act (RRA) and the Railroad Retirement Tax Act (RRTA) differ with respect to non-monetary earnings. Under the RRTA, the value of non-monetary earnings is taxable whether or not there is an agreement as to the value or that the earnings will not be paid in cash.

Reporting compensation on a paid or earned basis

Regular earnings may be reported as compensation for the period the payment was earned, referred to as "earned basis," or when the payment was made, referred to as "paid basis."

- Earned Basis: Compensation is credited with respect to the payroll period in which it was earned even though paid and reported at a later date.

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CHAPTER 1: Regular Earnings, Continued

Reporting compensation on a paid or earned basis (continued)

- Paid Basis: Compensation is credited with respect to the period in which compensation is paid, actually or constructively, regardless of when the services which generated the compensation were performed.

Employee requests compensation to be reported when earned

Employers choosing to report compensation on a paid basis are subject to the proviso that an employee, within four years after the report, may request to have the compensation reported, by way of an adjustment, for the year in which it was earned. This provision is found in the Railroad Retirement Board's regulations 20 CFR 209.7 (3). Employee requests to have compensation adjusted to an earned basis may be made to the employer directly or to the RRB who will notify the employer to file an adjustment report. Requests made under this proviso must be honored.

CHAPTER 2: RUIA Compensation and Multiple Employers

Prorating RUIA contributions among multiple employers

Unlike compensation under the Railroad Retirement Act and the Railroad Retirement Tax Act, compensation and contributions under the Railroad Unemployment Insurance Act (RUIA) may be prorated among the multiple employers. If an employee of a national or system unit also worked for another covered employer in the same month, the employee's combined earnings are creditable up to the monthly RUIA maximum. If the combined earnings exceed the RUIA monthly maximum, the creditable RUIA compensation may be prorated or allocated between the two employers. The method of prorating is not set by the RRB but by an agreement between the two employers. Any method which yields the correct RUIA compensation is acceptable to the RRB.

If the RUIA compensation is prorated between a national or system unit and another covered employer, the national or system unit must retain the records of the employee's earnings from the other employer **for the full payroll retention period** (5 years), provided by the employee. Information regarding employer record retention is in Part V, Chapter 10.

Example of Prorating RUIA Contributions with Primary Employer

One common method of apportioning RUIA compensation between two employers is for the system unit to report RUIA compensation only in the amount not reported by the primary employer. If the primary employer has reported RUIA compensation in an amount less than the monthly maximum, subtract the compensation reported by the primary employer from the monthly maximum. This remainder is the amount of RUIA compensation to be reported by the system unit. However, do not exceed the total earnings paid by the system unit for the month.

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CHAPTER 2: RUIA Compensation and Multiple Employers

Continued

Example of Prorating RUIA Contributions as a Percentage

Another method of apportioning RUIA compensation is for each employer to report RUIA compensation in a ratio equal to the ratio of the gross earnings paid by the two employers.

- Determine the total earnings for the month and the total creditable RUIA compensation based on the total earnings.
- Determine the ratio of the system unit earnings to the total earnings.
- Multiply the creditable RUIA compensation by the system unit ratio. This will yield the system unit share of RUIA compensation under this method.

These two methods of RUIA compensation prorating are illustrated in Appendix V.

CHAPTER 3: Delegate Service and Other Exclusions to Creditable Compensation

Payments Not Considered Creditable Compensation

The following payments made to an employee by an employer are *not considered creditable* compensation under the RRA and the RUIA, and therefore should NOT be reported to the RRB:

- Payments made by a national labor organization to delegates for attending the sectional, regional, or national convention. These earnings are considered non-railroad earnings and are subject to the monthly earnings limit for disabled employee annuitants.

- Earnings from a local lodge of less than $25 a month for services to a railway labor organization do not generate a service month and are not creditable as compensation.

- Earnings of any amount for services to local lodges of railway labor organizations are not creditable as compensation under the RUIA. (Earnings of $25 or more a month for services to a local lodge are creditable as Tier I and Tier II compensation.)

- Contributions and payments for pension or profit sharing under a plan which qualifies for exclusion from income under the Internal Revenue Code. (Note- This exclusion does not apply to amounts withheld from the employee's compensation for deposit into the pension plan in lieu of a wage increase, as negotiated with a labor union, including 401(k) and 401(a) plans.)

- The exercise of a statutory stock option. Under Public Law (P.L.) 108-357, effective with tax year 2002, the exercise of a statutory stock option does not yield taxable compensation under the RRTA. As a result, the Railroad Retirement Board has determined that it does not yield creditable compensation under the RRA or RUIA. See program letter PL05-04, Changes in Creditable Compensation for Stock Options, on the RRB website.

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CHAPTER 3: Delegate Service and Other Exclusions to Creditable Compensation, Continued

Payments Not Considered Creditable Compensation (continued)

Reimbursements for employment-related expenses incurred where reimbursement is not subject to tax are not considered creditable compensation. For reimbursements to be excluded from compensation, documentation of expenses is required. The following reimbursements are not creditable compensation:

- Educational assistance that is excluded form compensation under Section 127 of the Internal Revenue Code.
- Allowances or provisions for meals and lodging which are excluded from compensation under Section 119 of the Internal Revenue Code. That section covers meals and lodging provided by the employer and usually on the employer's premises.
- Allowances or reimbursements for travel, meals, and lodging which are incurred while traveling in the business of the employer and where paid under a plan in which the employee must account for expenditures. Any expenditures not accounted for are creditable compensation.
- Reimbursement for moving expenses which are deductible under Section 217 of the Internal Revenue Code.

CHAPTER 4: Selected Fringe Benefits

Group Term Life Insurance

The cost of coverage of group term life insurance **greater than $50,000** is considered compensation under the RRA to the extent that it is included in the gross income of an employee and subject to railroad retirement tax. The cost of group term life insurance with respect to periods within an employment relationship is treated the same as ordinary compensation creditable for both Tier I and Tier II purposes. See Internal Revenue Code (IRC) section 79 for detailed information.

A taxable fringe benefit arises if coverage exceeds $50,000 and the policy is considered carried directly or indirectly by the employer, in which case:

- The employer pays any cost of the life insurance; or
- The employer arranges for the premium payments.

Reporting Life Insurance in "Earned" Versus "Paid" Situations

If compensation is being reported for the period that the compensation was earned, the cost of group term life insurance, with respect to periods after the termination of the employment relation, should be reported to the month in which the employment relation ended, up to the applicable annual Tier I and Tier II maximums. If the maximum creditable Tier I amount has been received, additional amounts would be considered miscellaneous compensation because the payment meets all the conditions described in Chapter 10 of this Part, about miscellaneous compensation.

If compensation is being reported for the period the payment was made, the cost of group term life insurance would be reported as Tier I, Tier II, and RUIA compensation for the year paid. No service month can be reported because the individual is no longer an employee.

Pension Plans

Amounts withheld from the employee's compensation for deposit into an employer pension plan account, amounts deposited into an employer pension plan account in lieu of a pay increase as negotiated with a labor union, or amounts deposited into a 401(k) pension plan for the employee, are considered to be the employee's funds and are creditable railroad compensation at the time of contribution. These amounts are subject to the railroad retirement tax. Employer matching funds are not considered compensation and are not subject to the railroad retirement tax.

CHAPTER 5: Vacation Pay

Chapter Overview

The Railroad Retirement Board (RRB) does not establish vacation policy for employers. The instructions are intended only to provide information on correct reporting of service and compensation in various vacation pay situations. Some examples may not be applicable to every employer.

Although related, a determination of creditable service is made separately from a determination of creditable compensation. These instructions clearly distinguish between determinations of creditable service and determinations of creditable compensation.

Vacation Taken

Employees of national and system units may earn a paid vacation. Vacation compensation may be credited to the actual vacation period or may be credited when paid. It is assumed that only current employees with employment rights can actually take a vacation.

Service is creditable for the actual vacation period. There is no option to credit service to the month paid. For example, employee Larry Lineman took vacation from December 15 through December 29. He was paid the following January 10. Service for the vacation period is creditable to December, when the vacation was taken. The vacation compensation may be credited to December, if compensation is reported when earned, or may be credited to January if compensation is reported when paid.

Vacation Pay To Former Employees

If vacation is paid to former employees it is presumed to be vacation payments in lieu of a vacation taken. See the section later in this chapter regarding Vacation Pay in Lieu of Vacation Period. No service month can be reported if an employee is no longer in an employment relation when paid. Thus, in the above example, if Mr. Lineman terminated his employment in November, the vacation payment made to him in January may be credited as compensation in November or January but no service month is creditable after November.

CHAPTER 5: Vacation Pay, Continued

Vacation Pay Credited After Date Last Worked

Vacation pay may be credited to a period after the date last worked when the vacation period would have extended into the month after the month last worked, if the vacation had immediately followed the date last worked. However, this is not an option if the employee does not have an employment relation during this period. Service for a vacation period cannot be credited after the employee retires, resigns, or otherwise relinquishes their employment rights.

The option of crediting vacation pay after the employee's last workday may be exercised if it is to the employee's advantage, such as when the employee needs an additional service month for eligibility for an annuity under the Railroad Retirement Act (RRA). If the employee has already retired to accept an annuity under the RRA, additional service credit for vacation pay is generally not advantageous. An employee cannot receive an annuity under the RRA and work for an employer covered under the RRA or receive a creditable service month for the same month. If additional service is credited after the month last worked, the employee is not entitled to receive an annuity for that month. If an annuity was already paid, the amount will be recovered from the employee.

Vacation Pay In Lieu Of Vacation Period

If a vacation period was not taken, but rather, the accrued vacation was paid in a lump sum payment(s), a service month is not creditable based solely on the vacation pay. The vacation pay is creditable as compensation and is reported the same as you report compensation generally, but no service month is reported.

It is common to see vacation paid in lieu of a vacation period at the end of an accounting period. ***For example***, if an employee is limited to 21 days of accrued vacation going into the new year, and the employee has accrued 22 days, one day will be paid at the end of the accounting year. Another common situation is when an employee resigns and is paid any unused vacation.

CHAPTER 5: Vacation Pay, Continued

Example *1:* Vacation Payment After Employee Retires

An employee worked from January through August 19, took vacation from August 20 through September 30, and retired October 1. On December 15, it was determined that the employee had three accrued vacation days that had not been taken. The three days were paid on December 28. The employee is credited with 9 service months, including the vacation month of September, but is not entitled to a service month for December. However, the vacation payment made in December is included in the employee's creditable compensation reported for the year.

Example 2: Vacation Pay In-Lieu-Of Vacation Period While On Medical Leave

An employee on extended medical leave has been in receipt of sickness benefits from the RRB since the beginning of the year. In June the employee requests that all accrued vacation be paid. On June 18, the employee is paid $2600 in a lump sum. A service month is not creditable for June. The $2600 is included in the employee's creditable compensation for the year. The employee is entitled to sickness benefits for all days in June since the vacation payment is not attributable to a vacation period.

Example 3*:* Vacation Period While On Medical Leave

An employee is on extended medical leave and received sickness benefits from the RRB from the first of the year. The employee requests accrued vacation of 13 days, beginning June 24 through July 10 and the employer's vacation policy allows an employee to take a vacation period while on leave. The employee is paid $2000 on July 12 and $600 on July 26, for the pay periods including the vacation days. Service months are creditable for June and July. The $2600 is included in the employee's creditable compensation for the year. The employee is not entitled to sickness benefits for June 24 through July 10 because he/she received vacation pay for those days.

You will note that examples 2 and 3 are the same except that in example 2, the employee requested a pay-out of accrued vacation, whereas in example 3, the employee requested to take a vacation period.

CHAPTER 5: Vacation Pay, Continued

Example 4: Vacation Period Taken In Individual Days While On Medical Leave

An employee is on extended medical leave and has been in receipt of sickness benefits from the RRB and supplemental sick pay from Trustmark since the beginning of the year. In June the employee requests that accrued vacation of 13 days be taken as follows:

June 10 & 11
July 1 & 2
August 1 & 2
September 3 & 4
October 1 & 2
November 1 & 4
December 2

The employee is paid $400 vacation pay in each of the months June through November and $200 in December. The employee is credited with service for seven months June through December. The employee is not entitled to sickness benefits under the Railroad Unemployment Insurance Act for the days for which he took vacation. The $2600 is included in the employee's creditable compensation for the year.

Example 4 is similar to example 3 except that the employee in example 4 has spread his vacation over seven months to increase his service months. Again, whether an employee may elect his vacation in the above manner is the policy of the employer not the RRB. These instructions are intended to inform you how to report should your personnel policy allow for this situation.

Example 5: Vacation Pay To Employee's Survivors

An employee works through April 20 and dies. On May 25, the employer pays to the survivors $2250 for the 12 days of vacation the employee had accrued. No service can be credited to May or any other month after the month the employee dies. The $2250 is subject to payroll taxes and is reported as creditable compensation. If, however, the accrued vacation were paid in a year subsequent to the year the employee died, the payment would not be creditable or taxable.

CHAPTER 6: Back Pay

Back Pay Defined

Back pay, as used in these instructions, is a retroactive wage increase. For example, a negotiated contract expires December 31st but employees continue to work while a new contract is negotiated. A new contract is approved in the following August which includes a pay increase retroactive to January 1st. The retroactive increase, or back pay, is paid in September, for work beginning January 1st. .

Crediting Back Pay

Like other compensation, back pay may be creditable for the month compensation is paid or for the period earned. Also, like other compensation, if back pay is reported for the month paid and the employee makes a timely request that it be allocated instead to the month(s) earned, the employer must submit an adjustment report accordingly. See Part II, Chapter 5 for more information about employee protests of service and compensation records.

No Service Month With Back Pay

A service month should not be reported for the month that back pay was paid. In the case of a retroactive wage increase, it is presumed that service has already been credited based on the initial wage payment prior to the increase

Distinguishing Between Back Pay And Pay For Time Lost

Back Pay under the RRA and RUIA is defined differently than pay for time lost. Employers have used the term back pay to refer to pay for time lost. For example, an employer may indicate that a discharged employee won reinstatement with back pay from the termination date. This would be payment for the period of lost wages, not back pay as defined under the RRA and RUIA. The name the employer gives to the payment does not govern the rules under which the payment is creditable. See the next chapter for instructions on reporting pay for time lost.

CHAPTER 7: Pay for Time Lost

Pay For Time Lost Defined

Because pay for time lost is an award of both service and compensation, it applies to national and system units. Pay for time lost is a type of creditable compensation attributable to wages lost for an identifiable period of absence from active service. Its statutory basis is Section 1(h)(2) of the Railroad Retirement Act (RRA), Section 1(h)(I) of the Railroad Unemployment Insurance Act (RUIA), and Sections 211.3 and 322.6 of the regulations.

Crediting Pay For Time Lost

Pay for time lost differs from other compensation in that the payment may not be credited when paid, but by definition, must be credited to the period for which the time was lost. Applicable payroll taxes are assessed at the rates applicable when the payment was made. See the example later in this chapter.

Types Of Pay For Time Lost

Types of pay for time lost include, but are not necessarily limited to, the following:

- Personal injury settlements that allocate a portion of the damages as lost wages for a specific period following the injury;
- Dismissal allowances (See Chapter 8 of this Part);
- Guaranteed wages;
- Displacement allowances paid for loss of earnings resulting from displacement to a less remunerative position.
- Reinstating awards

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CHAPTER 7: Pay for Time Lost, Continued

Time Lost NOT Considered Creditable Compensation

In the following two situations, an award for time lost will not result in creditable service and compensation. In the first situation no payment was actually made and the other is where a payment was made but because the recipient was not an employee, the payment was not subject to RRTA taxes.

- Reinstatement awards often include awards for time lost, possibly referred to as "back pay". If an award for time lost does not result in a payment to the employee, then no service or compensation is creditable under the RRA. This might occur if a reinstatement award is reduced for other earnings**. If the award is reduced to zero, no service or compensation is creditable.**

- Hiring discrimination awards may or may not include an element of time lost. **If the payment is made to an individual who is not in an employment relation with the employer making the payment** and the payment is not subject to RRTA taxes, the payment would not result in creditable service or compensation.

Governing Principles

The following principles should assist you in reporting pay for time lost.

- **Credit when Earned.** The compensation is considered earned in the missing months or the months the employee was displaced to a less remunerative position. Therefore, it should be reported as service and compensation for those months. If you are not sure of the open service months on record, telephone or write to the Protest Section. The telephone number is (312) 751-4809, 4876 or 4882.

- **Employment Relationship Required.** As with all compensation, an employment relationship must exist for that period (See 20 CFR 204.6). If a settlement agreement requires that an employee resign to receive the payment, the employment relationship ceases effective with the resignation. Allocation into the future is permissible as long as an employment relation is maintained. It may not be credited until the period has elapsed and proven to be time lost. There is no provision for crediting service in advance.

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CHAPTER 7: Pay for Time Lost, Continued

Governing Principles (Continued)

- **Service and Compensation Must Relate to Actual Time Lost.** An allocation may not be arbitrarily made to any period of missing service, but must relate to an actual period of absence. Therefore, an allocation based on a reinstatement may not be prior to the dismissal. The specific months must be identified on Form BA-4, Report of Creditable Compensation Adjustments.

- **Ignore Deemed Service Months.** In most instances, a pay-for-time-lost allocation increases service as well as compensation, often eliminating or reducing any deemed service months in the year(s) involved. Therefore, deemed service months in the year(s) of the allocation should not be considered in counting an employee's total service months. See Part III, Chapter 1 for an explanation of deemed service months. See the example in the following section which illustrates why we advise ignoring deemed service when determining months to allocate.

- **Acceptable Pay for Allocation.** The amount of the pay for time lost must relate to an employee's normal monthly pay. (See 20 CFR 211.3(b). By regulation, a monthly allocation must be at least ten times the employee's daily pay rate in effect on the date of injury. For example, if an employee normally earned, $120 a day at the time of absence, the amount of pay for time lost allocated to each month should be at least $1200.

- **Taxed when Paid.** As with all compensation, pay for time lost is taxed under the Railroad Retirement Tax Act (RRTA) when paid. See taxation of compensation in Part III, Chapter 4. Because pay for time lost represents a period other than the current, the taxed amount and the creditable amount of the pay for time lost may differ.

CHAPTER 7: Pay for Time Lost, Continued

Example Of Allocating Service When Deemed Service Months Are Involved

Employee Bob Brakeman worked from January through April 18, 2003, when he was injured on the job. Mr. Brakeman returned to work on October 6, 2003, and worked through December. Mr. Brakeman was reported to have service months of January through April and October through December and creditable compensation of $52,900. Based on the creditable Tier II earnings, Mr. Brakeman would be entitled to ten service months. Since seven months were reported, an additional three months may be deemed. ($52,900 ÷ 5,375 = 9.8, rounded up to 10 total months. The $5,375 represents the 2003 Tier II monthly earnings base of $64,500 divided by 12.) Because Mr. Brakeman has an employment relation in all months in 2003, the months of May, June, and July are deemed as service months.

In 2005, Mr. Brakeman is awarded a settlement for personal injury that includes pay for time lost due to the injury of $1500 per month. Because Mr. Brakeman has deemed service for the three months stated above, the pay for time lost amount of $3000 is **erroneously** allocated to cover the two remaining months of August and September 2004. Mr. Brakeman now has total Tier II compensation of $55,900 in 2004 and reported service for the months January through April and August through December (10 months). Based on the Tier II compensation of $55,900, Mr. Brakeman is entitled to 11 service months in 2004. ($55,900 / $5,425 = 10.3 rounded up to 11 months), so he will be deemed one (1) additional month. The settlement was intended to provide Mr. Brakemen with 12 months of service, however he is now short one service month.

Note*:* Deemed service months should NOT be counted when allocating pay for time lost. May through September should have been allocated as pay for time lost and Mr. Brakeman should have 12 service months in 2004. Deemed service months are the product of a calculation and when the components of the calculation are adjusted, the deemed months may also be adjusted.

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CHAPTER 7: Pay for Time Lost, Continued

Example of Crediting Compensation To Period Lost And Assessing Taxes When Paid

Employee Carry Clerk was dismissed in July 2002. As a result of a Public Law Board decision, she was ordered reinstated with full seniority rights and full pay for the period July 1, 2002 through October 31, 2004. Ms. Clerk returned to work in November 2004 and in December received a payment of $56,000, $2000 per month for the period July 2002 through October 2004. The total amount of $56,000 should be considered together with the other compensation paid to Ms. Clerk in November and December 2004 to determine the correct amount of railroad retirement tax due for 2004. The 2004 tax rates and maximum earnings bases are used to compute the tax.

Example of Crediting Compensation To Period Lost And Assessing Taxes When Paid (Continued)

Service months and compensation in the amount of the award are creditable as if they had been earned in the period July 1, 2002 through October 31, 2004, using the appropriate maximums for that period. This award requires an adjustment to the prior years as follows:

2002

- Increase service months for July through December
- Increase Tier I and Tier II compensation by $12,000, or
- by amounts to bring 2000 compensation to the maximums
- Increase RUIA compensation by $6,600 ($1100 x 6)

2003

- Increase service months for January through December
- Increase Tier I and Tier II compensation by $24,000
- Increase RUIA compensation by $13,440 ($1,120 x 12).

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CHAPTER 7: Pay for Time Lost, Continued

Reporting adjustments to the RRB

As with all compensation, withholding and depositing the proper taxes is not sufficient in itself to update an employee's record of service and compensation. Form BA-4, Report of Creditable Compensation Adjustments, must be filed to correct 2002 and 2003 record of service and compensation. The amount of the settlement allocated for 2004 ($20,000) should be included on the Form BA-3a, Annual Report of Creditable Compensation, filed for 2004, along with the regular earnings paid in 2004. Remember, service months Tier I, Tier II, and RUIA compensation are creditable based on an award for time lost.

If an employee has filed for an annuity, the employer will likely receive Form G-88A.1, Request for Verification of Last Date Carried on Payroll. Any current payments for time lost should be included on this form. The “date last worked” should reflect the last day paid for lost time, if that date is later than the actual date worked.

Personal Injury Settlement

Allocation for time lost must relate to the time lost resulting from the injury. Therefore, the allocation cannot begin prior to the date of the injury.

If the personal injury claim includes time lost and the settlement or court order does not specify an amount for time lost, or does not allocate an amount to factors other than time lost, the entire amount of the settlement is presumed payable for time lost and compensation is creditable and taxable based on the full amount.

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CHAPTER 7: Pay for Time Lost, Continued

Employee In Receipt Of RUIA Benefit

If a payment is made for time lost which covers a period for which unemployment or sickness benefits under the RUIA were previously paid, reimbursement is due the RRB. You should contact the Claims Adjustment and Settlement Section to learn the correct amount to withhold from the award to reimburse the RRB. Refer to Appendix II, Subject: Request for Lien Amount under Section 12(o) of the RUIA.

The amount withheld for reimbursement of benefits is in addition to employment taxes that must be withheld on a payment for time lost. Reimbursement of sickness benefits yields a tax credit for the employer of any Tier I employer tax paid. Reimbursement of unemployment benefits is also credited to the employer's record in determining the RUIA contribution rate.

Reopening A Pay For Time Lost Award

The reopening of a pay for time lost award to make an additional award of service and/or compensation is considered a correction of the original record. The law limits the period during which corrections to service and compensation records may be filed. The period during which corrections may be filed begins with the date the report of the original award was due at the RRB. See Part V, Chapter 9, to determine time limits for filing corrections.

CHAPTER 8: Separation/Severance Payments and Dismissal Allowances

Separation/ Severance and Dismissal Allowances are Creditable Compensation

Payments that result from the abolition of an employee's job may be known as separation, severance, termination, coordination, dismissal, continuation, or guarantee payments or allowances. By whatever name they are called, they constitute creditable and taxable compensation. The regulations of the Railroad Retirement Board (RRB) distinguish between separation or severance allowances and dismissal allowances. These two types of payments are creditable in different ways.

Know the Terminology

The term that an employer gives the allowance does not govern the rules under which the payment is taxed and credited. If the terms of an agreement meet the Railroad Retirement Act's definition of a dismissal allowance, but the employer calls it a separation allowance, the rules for a dismissal allowance will still apply.

Separation Allowance Defined

Under the Railroad Retirement Act (RRA) and Railroad Unemployment Insurance Act (RUIA), if an employee relinquishes job rights for the purpose of receiving an allowance, the payment is considered to be a separation allowance. A separation allowance is considered earned in the month that the employee fulfills the conditions necessary to receive the pay, which is usually the month in which the employment relation is severed or the month last worked.

Reporting Separation/ Severence Payments

Whenever you make separation allowance or severance payments to an employee, such payments are to be reported to the RRB on Form BA-9, Report of Separation Allowance or Severance Pay. See Part V, Chapter 6 for information on completing Form BA-9.

Reporting Separation Allowances on an Earned Basis

Employers electing to report on an earned basis should report the entire separation allowance amount to the year last worked or to the year of separation, up to the annual maximum. If the compensation exceeds the maximum for that year, the excess Tier I compensation is reported as miscellaneous compensation on Form BA-10, Report of Sick Pay and Miscellaneous Payments. See Part V, Chapter 7.

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CHAPTER 8: Separation/Severance Payments and Dismissal Allowances, Continued

Reporting Separation Allowances on a Paid Basis

Employers electing to report on a paid basis will report the separation allowance paid in the year as compensation on their annual report for that year. This is true regardless of whether the payment is made in a lump sum or in periodic installments.

Employment Relation in Separation/ Severance Allowances

If, according to the terms of the agreement, the employee does not retain a genuine employment relation within the meaning of the RRA and receives monthly or periodic payments, the payment is considered a separation allowance. The following, although not exhaustive, is evidence that an employment relation has ended:

- The employee has resigned or relinquished employment rights from an employer;
- The employee resigns or relinquishes employment rights before receiving any payment from an employer;
- The employee may not be recalled during the period of the allowance;
- The employee may not continue to receive employee benefits.

***Example* of a Separation Allowance**

Employee Bennie Fit last worked in June 2002 at which time his employer was downsizing. He agreed in June to accept $24,000, paid in 24 monthly installments, in consideration of his immediate resignation. No service months are creditable after June 2002 because no employment relation existed.

Employers who elect to report compensation on an earned basis should credit all compensation paid in the 24 month period to June 2002, Mr. Fit's date last worked, by using a Form BA-3a for money paid in 2002 and a Form BA-4 for money paid in 2003 and 2004 up to the 2002 annual maximum earnings base. Employers who elect to report compensation on a paid basis should report the compensation actually paid in 2002, 2003 and 2004, on their BA-3a annual reports for those years without crediting additional service months.

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CHAPTER 8: Separation/Severance Payments and Dismissal Allowances, Continued

Dismissal Allowance Defined

A dismissal allowance is a type of pay for time lost, as described in Chapter 7 of this Part, and is creditable as service and compensation. Whereas most pay for time lost is awarded retroactively to a prior period where earnings were lost, a dismissal allowance is usually paid as part of current payroll. For reporting purposes, a dismissal allowance appears on the report as though the employee had continued to work during the period of the allowance.

Employment Relation in Dismissal Allowance

If, according to the terms of the agreement, the employee retains a genuine employment relation within the meaning of the RRA and receives monthly or periodic payments, the payment is considered a dismissal allowance, not a separation allowance. The following, although not exhaustive, is evidence an employment relation exists:

- The employee has not resigned or relinquished employment rights from an employer;
- The employee resigns or relinquishes employment rights after receiving final payment from an employer;
- The employee may be recalled during the period of the allowance;
- The employee remains covered under various employee plans; or
- The employee continues to receive employee benefits.

***Example* of a Dismissal Allowance**

Employee Morris Code last worked in June 2002 at which time his job was abolished. Based on a labor-management agreement, Mr. Code was entitled to monthly payments of $1,000 for two years beginning in July 2002. During the two years, Mr. Code retained various employee benefits. At the end of two years, he will officially retire from his employer. Mr. Code is considered to be in receipt of a dismissal allowance. Service and compensation should be reported for the 24 months from July 2002 through June 2004 on a Form BA-3a.

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CHAPTER 8: Separation/Severance Payments and Dismissal Allowances, Continued

Determining When to Credit Compensation

As illustrated in the examples, the creditability of payments paid in consideration of termination of employment cannot be determined solely by when the payment is made and taxed. The date of the cessation of a genuine employment relation must also be considered when determining the period to which compensation is creditable.

CHAPTER 9: Guarantee Payments

Guarantee Payments

Guarantee Payments are employer payments under any merger, agreement or job protection arrangement that guarantees payment of compensation during periods when an employee has been deprived of employment. These payments are offered in the form of contracts, settlements and/or various agreements between management and its employees.

There will be situations that require a decision by the RRB, its General Counsel, or even a ruling in a federal court. This section reviews several of these type cases and provides a synopsis of each.

Court-ordered Pay for Time Lost (PTL)

Court ordered settlements of service and compensation must meet the criteria of all Pay for Time (PTL) cases as prescribed by the Regulations. In some instances the courts may determine that service and compensation should be credited without consideration that their ruling does not meet the requirements of our regulations under the Railroad Retirement Act (RRA).

In a case of this nature the courts awarded an employee a PTL settlement of service and compensation for the period September 1, 1973 through June 30, 1983. However, the employee worked for a non-covered employer form September 1973 through March 1976. Also, the employee's earnings were higher than the amount of back pay that was paid through the PTL settlement.

The RRB disallowed the claim for the period September 1973 through March 1976. The Board determined that these were non-railroad wages that cannot be considered as compensation; and these wages exceeded the amount of the PTL, therefore no loss was incurred.

This information is referenced in Legal Opinion L-86-40, which is available upon request.

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CHAPTER 9: Guarantee Payments, Continued

Discrimination Awards

Discrimination suits can also be awarded by court order but must also satisfy our regulations under the RRA.

In one such case, the judgment ordered that the payments made in the settlement and the taxes paid would be handled as follows:

- Credited to a prior period (August, 1985);
- 50% of award for back pay, wages, compensation, etc; and
- 50% of award for damages: "intentional infliction of mental or emotional distress.

However, some employees no longer worked for the employer.

RRB regulations require that a PTL settlement must be paid for an identifiable period of time, but NOT later than the termination of an employment relation. RRB denied credit after the employment relation terminated.

This information is referenced in Legal Opinion L-86-130, which is available upon request.

L- 90-45 Longshoremen and Harbor Workers' Compensation Act (LHWCA)

The Longshoremen and Harbor Workers' Compensation Act (LHWCA), provides for a no-fault system of compensation payments for an on-the-job injuries. However, statutes in the LHWCA limit the liability and restrict the amount of the payments.

An Administrative Law Judge ordered a covered employer to make payments to an employee under the LHWCA. The employee appealed to have service months credited to the record for the period of lost time.

The RRB determined that the service and compensation is not creditable under the ACTS. The Board ruled that the payments under LHWCA were social insurance payments rather than compensation and that these payments were not considered compensation for railroad retirement tax purposes (26 U.S.C. 3231 (e)(4)).

This information is referenced in Legal Opinion L-69-10 and L-90-45, which is available upon request.

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CHAPTER 9: Guarantee Payments, Continued

Rehabilitation Act of 1973

A class of covered employees who were receiving disability annuities under the Railroad Retirement Act were eligible to receive back pay awards under the Rehabilitation Act of 1973. The Board determined that claims awarded under this statute constituted PTL under the Acts. Back pay awards are generally considered creditable in the month the payment was awarded (paid).

The RRB ruled the payments are creditable under the Acts. However, any annuitants who received back pay would also be credited with an additional service month for each month that the back pay was credited. Consequently, the annuitant would forfeit their annuity for the month of payment and be required to repay any overpaid benefit amounts.

This information is referenced in Legal Opinion L-84-22, which is available upon request.

Job Stabilization Agreement

A group of labor organizations and most all of the Class 1 carriers are parties in an agreement commonly referred to as the "Feb 7th Job Stabilization Agreement" (JSA). That agreement provides certain employment and compensation guarantees to employees who have or obtain ten or more years of employment with those carriers as of February 7, 1965,

Under revisions to that agreement, updated on September 26, 1996, the guarantee covered employee compensation equivalent to their 1997 earnings. However the agreement did not address the treatment of service months. This lack of service negatively impacted the employees' RUIA qualification.

The RRB ruled that employees, upon claim and proof of the guarantee payments, will be allowed creditable service months equivalent to the 1997 record of the RRB.

This information is referenced in Legal Opinion L-2002-13 and L-84-162, which is available upon request.

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CHAPTER 9: Guarantee Payments, Continued

Clerical Training Program

A covered employer developed a Clerical Training Program for potential employees and would hire them upon completion as needed. The employer contended that these students were not employees until they successfully completed the program and placed themselves on a hiring board. The training program was developed in the following manner:

- Candidates applied through local RR division office, and those selected were scheduled to begin with the next class;
- Trainees received six weeks formal training and a two to four week period of on-the-job training (cubbing) with a journeyman employee;
- Students receive a daily allowance and a meal allowance; and
- Trainees that do not complete the program do not have employment rights.

The RRB ruled that the students who took the training course are considered employees and the allowances they received is creditable compensation based on the following criteria:

- The employer screened the applicants for the training class;
- The employer's introductory booklet refers to the "Hiring Officer" who furnished the training materials;
- The agreement was consensual in nature; and
- The employees were in the control and direction of the employer during the training.

This information is referenced in Legal opinion L-83-235, which is available upon request.

CHAPTER 10: Miscellaneous Compensation and Sick Pay

Definition of Miscellaneous Compensation

Miscellaneous compensation is any payment which is subject to Tier I taxes and is creditable as Tier I compensation, but cannot be credited as regular compensation. Miscellaneous compensation, as referred to in these instructions, must meet the following conditions:

- The payment is subject to railroad retirement tax;
- The payment is remuneration for services rendered in an earlier year;
- The payment cannot be credited to the earlier year because the employee already has maximum Tier I compensation credit in that year; and
- The payment cannot be credited to the year when the payment is made because no service was performed in the year of payment and the employer reports compensation generally on an earned basis. See Chapter 1 of this Part, for an explanation of earned basis.

***Example* of Miscellaneous Compensation**

An employee resigns on 12/31/03 and retires on 01/01/04. He earned and received payments totaling $83,000 in 2003, and received a payment of $6,000 in March 2004 for his last pay period in 2003, for vacation pay and other benefits earned but not paid in 2003. Because the employer generally reports on an earned basis, the employer filed an adjustment increasing 2003 compensation by an additional $4000 bringing the total compensation for 2003 to the maximum of $87,000. The remaining $2000 paid in 2004 is reported as miscellaneous compensation for 2004.

Taxable and Creditable Miscellaneous Compensation

In the example, you will note that the entire $6000 paid in 2004 is subject to Tier I, Tier II, and Medicare taxes at the 2004 tax rate. While the taxable and creditable compensation are not always equal for each year, particularly for employers who report compensation on an earned basis, the amounts will usually be equal in the aggregate for all years. In the previous example, the creditable Tier I compensation (after the adjustment) for 2003 is $87,000 and $2000 for 2004. The total creditable compensation for the two years is $89,000. The taxable compensation for 2003 is $83,000; and $6000 for 2004 for a total of $89,000.

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CHAPTER 10: Miscellaneous Compensation and Sick Pay, Continued

Definition of Sick Pay Paid by the Labor Organization

Sick pay is compensation paid under a plan or agreement available on the same basis to employees in a like class and payable for days not worked on account of injury, illness, sickness, disease, pregnancy, or childbirth. If an employee receives his or her regular earnings, wages, or salary while off sick, this is not sick pay but regular earnings.

If your organization pays sick pay to your employees, request a copy of The Reporting Instructions for Creditable Sickness Payments form the RRB's Quality reporting Service Center.

Report Miscellaneous Compensation and Sick Pay on Form BA-10

Because sick pay and miscellaneous pay are both creditable only as Tier I compensation, they are reported separately from regular earnings to help ensure the integrity of our records.

Employers should use Form BA-10, Report of Miscellaneous Compensation and Sick Pay, to report this type of compensation. See Part V, Chapter 7 for information on how to complete Form BA-10.

CHAPTER 11: Contract Services

Coverage under the RRA and RUIA

If a labor organization contracts work with non-railroad employees, this may allow the non-railroad employees to be covered under the Railroad Retirement Act (RRA) and Railroad Unemployment Insurance Act (RUIA) as though they were a covered employee. For this to occur, the non-railroad employees would have to be determined to be in an employment relationship with a covered employer.

The Railroad Retirement Board uses definitions of "employee" and "service" in the RRA and RUIA as well as principles of common law to determine whether a business relationship is that of an employer-employee or that of an independent contractor.

Basis of Coverage

The primary basis of such coverage is Sections 1(b) of the RRA and 1(b) and 1(e) of the RUIA which define an employee as an individual in the service of an employer. Section 1(d)(1) of the RRA further characterizes "in the service of an employer" as either:

- Subject to the employer's continuing authority to direct the work; or
- Rendering professional or technical services and is integrated into the employers' staff; or
- Rendering, on the property of the employer's operations, personal services which are integrated into the employer's operations.

Subject to the Employer's Authority

A person is an employee if the person for whom he or she works has the right to direct and control the way he or she works both as to the final result and as to the details of when, where and how the work is to be done. The employer need not actually exercise control. It is sufficient that the employer has the right to do so.

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CHAPTER 11: Contract Services, Continued

Rendering Technical Services& Integrated into Staff

Some services, such as bookkeeping, which are not necessarily associated solely with the railroad industry, may be performed by individuals integrated into the overall railroad staff or by individuals in a distinctly independent trade or business.

Rendering Integrated Services on Employer's Property

One indication of employee status would be performance of a service that by its nature is so integrated into the railroad's operation that it must be performed under the railroad's control. Therefore, if an individual, nominally on the payroll of a hiring agency, performed service for a railroad which is clearly an integral part of the railroad's operation, such as locomotive engineer, signalman, or maintenance of way worker, it would appear that an individual would be an employee under the RRA and RUIA.

Employee Status Criteria

A person may be considered an employee if one or more of the following apply:

- Performance of work on the employer’s premise;
- Execution of a contract for continuing services over a long or indefinite period;
- Devotion of substantially all of a person’s working time to such services;
- Performance of duties similar to those previously performed as an employee;
- Periodic payment of regular remuneration rather than payment for a specific result or product.

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CHAPTER 11: Contract Services, Continued

Independent Contractor Status Criteria

A person may be considered an independent contractor if one or more of the following apply:

- An independent office or the performance of the work in places not associated with the employer's premises;
- Performance of similar services for persons other than the employer;
- Complete freedom as to the amount of time to be expended in rendering a particular service;
- Agreements for the performance of services for a limited time period on a particular project;
- Payments for a particular result accomplished rather than regular remuneration on a time basis.

Who Makes the Decision

The three-member Board, based upon the recommendation of the General Counsel is responsible for making determinations of employee status. While employers may make the initial employment status decision, the decision may later be subject to investigation by the Division of Audit and Compliance in the Bureau of fiscal Operations. Their findings are then forwarded to the General Counsel who will make a recommendation to the Board.