

above example would be reported on the Employer's Annual Report of Compensation required under 20 CFR 209.6 along with other wages paid to other employees that year. Pay for time lost payments would be indistinguishable from regular wages. The Labor Member believes that his proposal would address the concern of the majority by fully funding the prospective pay for time lost credits while continuing to allow railroad employees and railroad employers to use pay for time lost allocations in a positive way to resolve disputes.

With the modification he suggested, the Labor Member feels there is no further justification in the majority's position on this regulation. The majority has indicated that it is better to scrap a "bad" regulation rather than "tinker" with it. The Labor Member believes that making employees who are injured in service to the rail industry whole is not tinkering. It is a moral obligation.

The majority also believes that the Labor Member's proposal amounts to allowing employees to purchase retirement credits. This is true. It would be allowed, however, for only those employees who have demonstrated through long years of service a career commitment to the rail industry, and then, only when they have been severely injured or otherwise incapacitated while performing rail service. Finally, it would be further limited to only those in the foregoing category who receive compensation from a settlement based on a conviction of both the railroad and the employee that the railroad would probably be found negligent in causing the employee's injury.

The majority points out that the additional tax paid for several years of pay for time lost will not finance the additional benefits which would be paid under the Labor Member's proposal. The Labor Member believes that this is true but irrelevant. Completely aside from the obligation to make injured employees whole, whatever the cost, is the well established, clearly understood, and universally accepted feature of social insurance programs that the contributions paid by a disabled participant will rarely ever finance the actual benefits paid to such individual. Covering the cost of such eventualities from contributions of the remaining participants, including the negligent railroads, is the purpose of an insurance program. Disability benefits would virtually never be paid by any program under the condition laid down in this regulation by the Board majority.

The majority notes that ten times the employee's daily rate of pay is too low

an amount for a month of compensation. The Labor Member points out that an employee who is not injured need perform only one hour of service to get a month of railroad retirement credit. However, whenever low compensation months are used to obtain additional service, the compensation average on which the annuity is based is depressed, producing a lower benefit. In any event, the ten times daily pay rate rule has been set by regulation by a previous Board after full and careful review of the issue. The issue ought not be reopened now.

Finally, the Labor Member notes that the majority references "employees who negotiate" pay for time lost. This terminology clearly acknowledges that, under current procedures, prospective credit can be given only when the railroads have agreed to do so. Thus, the railroads already control the use of this procedure through their right to simply refuse to go along with prospective crediting. Therefore, there is no need for the regulation change herein proposed by the Board majority.

The Office of Management and Budget has determined that this is a significant regulatory action under Executive Order 12866. There are no information collections associated with this rule.

**List of Subjects in 20 CFR Part 211**

Pensions, Railroad employees, Railroad retirement.

For the reasons set out in the preamble, chapter II of title 20 of the Code of Federal Regulations is amended as follows:

**PART 211—[AMENDED]**

1. The authority citation for part 211 continues to read as follows:

**Authority:** 45 U.S.C. 231(f).

2. Section 211.3 is amended by adding paragraph (c):

**§ 211.3 Compensation paid for time lost.**

\* \* \* \* \*

(c)(1) Except as provided in paragraph (c)(2) of this section, pay for time lost may not be credited to any period after the date of the judgment or settlement agreement providing pay for time lost. If the payment is not the result of a judgment or settlement, pay for time lost may not, except as provided in paragraph (c)(2) of this section, be credited to any period after the date of payment.

(2) Pay for time lost may be creditable as deemed service under section 3(i)(4) of the Railroad Retirement Act in the year in which either the judgment or settlement occurred or in the case of pay for time lost not attributable to a

judgment or settlement, in the year in which the payment occurred.

Dated: November 21, 1997.

By Authority of the Board.

For the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[REG-105160-97]

RIN 1545-AV17

**Qualified Nonrecourse Financing Under Section 465(b)(6); Hearing Cancellation**

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed regulations.

**SUMMARY:** This document provides notice of cancellation of a public hearing on proposed regulations under section 465(b)(6) regarding qualified nonrecourse financing.

**DATES:** The public hearing originally scheduled for Wednesday, December 10, 1997, beginning at 10:00 a.m. is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-7190, (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed regulations under section 465 of the Internal Revenue Code. A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Wednesday, August 13, 1997 (62 FR 43295), announced that the public hearing on proposed regulations under section 465 of the Internal Revenue Code would be held on Wednesday, December 10, 1997, beginning at 10:00 a.m., in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C.

The public hearing scheduled for Wednesday, December 10, 1997 is cancelled.

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

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