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Mr. Robert W. Walker, Attorney
Santa Fe Coast Lines Hospital Association
441 Santa Fe Building
Los Angeles 14, California

Re: Santa Fe Coast Lines Hospital Association

Dear Sir:

Your letter of May 27, 1952, transmitting information and material concerning changes in the organization and administration of the above-named organization, has been carefully considered.

In General Counsel's opinion dated August 5, 1940, L-40-377, the Santa Fe Coast Lines Hospital Association was held to be an employer within the meaning of the Railroad Retirement and Railroad Unemployment Insurance Acts on the ground that it was controlled by The Atchison, Topeka and Santa Fe Railway Company and that it performed service in connection with the transportation of passengers and property by railroad.

According to the information submitted it appears that the Association's articles of incorporation and by-laws were amended so that during the period from February 3, 1947 to March 2, 1948, the Board of Trustees of the Association consisted of nine members, four selected by the General Manager of the Railway and five elected by and from the General Chairman or Vice General Chairmen of eighteen railway labor organizations. After March 2, 1948, the Board of Trustees was reduced to eight members, the Railway selecting three.

Although the composition of the Board was thus changed, the officers of the Association were required, until March 1, 1949, to be certain officials of the Railway. After that date, the Trustees' choice of officers was unrestricted. Probably, most significant in this regard is the provision permitting amendment of the by-laws by simple majority of the Trustees after March 1, 1949 but requiring an affirmative vote of two-thirds of the Trustees prior to that date. Since the Trustees representing labor were a majority of the Board but not two-thirds, the railroad, until March 1, 1949, could prevent any change in the manner of selection of the officers of the Association.

Accordingly, effective control of the Association's day-to-day activities by the Railway did not terminate until March 1, 1949, despite the earlier changes in the composition of the Board of Trustees. It is my opinion, therefore, that the Association ceased, as of March 1, 1949, to be an employer subject to the Railroad Retirement and Railroad Unemployment Insurance Acts.

Although service to the Association after March 1, 1949 is not creditable, the annuities heretofore granted based in part on service after that date will not be disturbed.

With respect to your inquiry concerning a transfer or refund of taxes collected under the Railroad Retirement Tax Act (formerly the Carriers Taxing Act), an authoritative answer may be secured from the Bureau of Internal Revenue which administers that Act. However, your attention is directed to Section 7(e) of the Railroad Retirement Tax Act which expressly provides that "Any tax paid under this Act by a taxpayer with respect to any period with respect to which he is not liable shall be credited against the tax, if any, imposed by Title VIII of the Social Security Act upon such taxpayer, and the balance, if any, shall be refunded."

Very truly yours,

Myles F. Gibbons
General Counsel

BD
CC: Bureau of Internal Revenue