

Montgomery, Newton, Bur. Int. Revenue  
Taxation, Employees Absent.  
Compensation  
Employee Absent With <sup>Regular</sup> Pay, Taxation & Compensation R.R. 1  
Employee Absent With Irregular or Relief Pay, Taxation & Compensation R.R. 1  
July 25, 1936  
36-T-96  
L-36-35

Mr. Newton Montgomery  
Bureau of Internal Revenue,  
Washington, D. C.

Dear Mr. Montgomery:

L-36-35  
R.R. 1

Mr. Dailey, Member of the Railroad Retirement Board, has transmitted to me your request for a statement of our view on whether taxes should be collected under the Carriers' Taxing Act in respect of (a) continued payment of compensation in whole or in part to employees who are on vacation or absent from duty because of sickness, and (b) allowances to employees who are absent from duty because of sickness.

Your inquiry raises questions of interpretation identical with those to which the Board has given consideration in connection with the corresponding definition of "compensation" in Section 1 (g) of the Railroad Retirement Act. It is, of course, desirable that, so far as feasible, the interpretations made by the Commissioner of Internal Revenue and the Board should correspond with one another.

(a) The Board is at present of the opinion that the continued payment of regular compensation in whole or in part to employees who are on vacation or absent from duty because of sickness should be treated as compensation within the meaning of the definition of "compensation" contained in the Railroad Retirement and the Carriers' Taxing Acts. It seems inappropriate to the Board that payments of regular compensation to employees during absence on vacation or because of illness should be exempt from the taxes imposed by the Taxing Act or excluded from consideration in the computation of annuities under the Railroad Retirement Act. No such result is compelled by the language of the Act and no good reason appears for adopting a construction which would affect such a result.

(b) The Board is, on the other hand, of the opinion that payments made to employees who are absent from duty because of sickness, which are not intended as continued payments of regular compensation in whole or in part, but are made in individual cases in consideration of the employee's services to the employer or as a form of relief to the employee, are not compensation within the meaning of either Act. This much would seem to follow from the provision in both Acts that "compensation" shall not include "any payment received on account of sickness, disability, pensions, or other form of relief."

Sincerely yours,

Max Turner,  
General Counsel