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L59-512

Director of Budget and Fiscal Operations

General Counsel

Procedures followed by Railroad in Reporting Compensation

This is in reference to your memorandum of November 2, 1959, with respect to the difference in treatment of compensation reported to the Bureau of Wage and Service Records by the Chicago and North Western Railway Company and that reported to the Board by the Company for contribution purposes and to the Internal Revenue Service for railroad retirement tax purposes.

You state, by way of example:

"... the payroll for the last half of December 1958, although paid in January 1959, was reported as 1958 calendar year compensation. However, compensation reported on contribution returns covers only the payrolls actually paid during the period covered by the return. The last half of December 1958 payroll was not included in the return for the quarter ended December 31, 1958, contributions on which were due February 28, 1959; instead the payroll in question was included in the return for the 1st quarter of 1959. This same lag in contribution payments occurs each quarter. Also a similar lag occurs in the monthly deposits of railroad retirement taxes."

In my memorandum of August 14, 1958 to the Chief Executive Officer (L-58-368), a copy which is attached, I stated, with respect to identical reports by the same employer covering an earlier period, as follows:

"The General Accounting Office report recommends that a deficiency of \$18,607 be assessed against the employer involved. This case was discussed with the representatives of the General Accounting Office and it was explained to them that there is some legal basis for regarding the compensation earned in the last half of December 1956 but paid to the employees in January 1957, as compensation paid in the last quarter of 1956. This is in accord with the treatment given to such compensation under the Railroad Retirement Tax Act,

Director of Budget and Fiscal Operations

although we recognize that that Act has a special provision authorizing such treatment. It was felt that insofar as possible the employers should be given the same consideration under the Railroad Unemployment Insurance Act as they are given under the Railroad Retirement Tax Act. The legal basis for so treating the compensation under the Railroad Unemployment Insurance Act would be that the report of the compensation by the employer in March of 1957 constituted a request made by the employer on behalf of the employees to credit the compensation to the period in which earned, in accordance with the last sentence of Section 1(i) of the Railroad Unemployment Insurance Act. Another possible justification is the sentence in Section 1(i) reading as follows: 'A payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made.' (Emphasis supplied)

"Of course, it is to be noted that if the deficiency should be assessed against the employer in question, similar deficiencies would probably be in order against many, perhaps most, railroads covered by the Railroad Unemployment Insurance Act."

Your reference to the application of Section 8(d) of the Railroad Unemployment Insurance Act has been noted, but your attention is directed to the fact that this section states that adjustments without interest shall be made "under regulations prescribed under this Act by the Board". The Board has not promulgated any regulations covering adjustments without interest in this type of case and I doubt seriously that the Board would countenance intentional delays in the payment of contributions without requiring interest to be paid thereon.

As you realize, if the Chicago North Western Railway Company wishes to include the payroll in question in the return for the first quarter of 1959, it will have to pay contributions at a higher tax rate. As to the future, the Board can require the Company to report by January 31 the compensation paid in January for the second pay period in December, as now provided in the Board's Regulations (Section 250.3), and need not give the Company an extension of time into February. Thus, the report of compensation will be made before February 1, and compensation will be treated as paid in the preceding calendar year as provided in Section 1(i) of the Railroad Unemployment Insurance Act.

With respect to other compensation paid during the calendar year, the Board's Regulations, Section 250.3(a)(1), call for "a report of the compensation paid to each employee for the calendar quarter. . . ."

Director of Budget and Fiscal Operations

(Emphasis supplied.) Section 345.5(b) provides that the quarterly contribution report (DC-1) shall show the amount reported on the compensation report for the quarter. Thus, the contribution and the compensation reports should be the same.

As to the proper procedures to be followed under the Railroad Retirement Tax Act, it would seem advisable to withhold comment until the matter has been discussed with representatives of the Internal Revenue Service.

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Attachment

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