

MEMORANDUM

February 2, 1944

TO The Director of Finance
Through The Executive Officer

FROM The General Counsel

SUBJECT Statute of Limitations upon Assessment and Collection of
Contributions under the Railroad Unemployment Insurance Act

In response to your request, I submit my opinion on the following:

QUESTIONS

1. What is the period of limitations, if any, within which contributions required by the Railroad Unemployment Insurance Act may be assessed or collected?
2. Does a statute of limitations apply to the assessment and collection of contribution underpayments? If so, (a) does it also apply to underpayments arising out of wage adjustments, and (b) when does such statute begin to run in either case?

OPINION

1. In accordance with the provisions of Section 3312 of the Internal Revenue Code, made applicable, with respect to contributions required by the Railroad Unemployment Insurance Act, by Section 8(h) of that Act, such contributions must be assessed within four years after they became due and court proceedings for their collection, without assessment, must be begun within five years after they became due, except that contributions may be assessed, or a court proceeding for their collection may be begun without assessment, at any time where the employer

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- (a) files a "false or fraudulent" contribution report with "intent to evade" the contribution;
 - (b) fails to file the contribution report "within the time required by law"; or
 - (c) willfully attempts "in any manner to defeat or evade" the contribution.
2. The statute of limitations upon assessment and collection of contributions is applicable to underpayments of contributions, including underpayments arising out of wage adjustments, and begins to run from the date fixed for the filing of the contribution report covering the period in which the compensation was earned.

DISCUSSION

Section 3312 of the Internal Revenue Code made applicable, with respect to contributions required by the Railroad Unemployment Insurance Act, by Section 8(h) of that Act, provides as follows:

"Except in the case of income, war-profits, excess-profits, estate, and gift taxes--

"(a) General Rule.--All internal revenue taxes shall (except as provided in subsections (b), (c), and (d) be assessed within four years after such taxes became due, and no proceedings in court without assessment for the collection of such taxes shall be begun after the expiration of five years after such taxes became due.

"(b) False Return or No Return.--In case of a false or fraudulent return with intent to evade tax, or of a failure to file a return within the time required by law, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

"(c) Willful Attempt to Evade Tax.--In case of a willful attempt in any manner to defeat or evade tax, the tax may be assessed, or a proceeding in court for the

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collection of such tax may be begun without assessment, at any time.

"(d) Collection After Assessment.--Where the assessment of any tax imposed by this title has been made within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun--

- (1) Within six years after the assessment of the tax, or
- (2) Prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer. (As amended by Oct. 8, 1940, c. 757, § 508 (a), 54 Stat. 1008.)"

Section 8 of the Railroad Unemployment Insurance Act requires the payment of a contribution by every employer measured by "compensation as is not in excess of \$300 for any calendar month payable by him to any employee." Payment of the contribution is due at the time fixed for filing the contribution report. 1/ The contribution report is required to be filed "for each quarterly period *** on or before the last day of the second calendar month following the period for which it is made." 2/ Thus, employer contributions, with respect to compensation payable during the quarterly period from July 1, 1939 to September 30, 1939, are due on November 30, 1939, and, unless the exceptions provided in Subsections (b) and (c) of Section 3312 of the Internal Revenue Code apply, the statutory four-year period within which such contributions could have been assessed expired on November 30, 1943, and the five-year period within which to begin a court proceeding for their collection without assessment will expire on November 30, 1944.

The periods of limitation within which contributions may be assessed and collected are applicable to underpayments of contributions. "If *** less than the correct amount of the contribution

1/ Section 345.10 of the Regulations under the Railroad Unemployment Insurance Act.

2/ Section 345.9 of the Regulations under the Railroad Unemployment Insurance Act.

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required *** is paid with respect to any compensation and the *** underpayment of the contribution cannot be adjusted *** the amount of the underpayment shall be collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations of the Board." (Sec. 8(e) of the Railroad Unemployment Insurance Act). The provision in Section 8(e) that contribution underpayments shall be collected "subject to the statute of limitations" is expressed in broad terms, including within its scope contribution underpayments arising out of wage adjustments which, although made after the quarterly period, relate to compensation payable with respect to employment during the quarterly period. For the provision is not limited to particular or specified types of compensation, but pertains to "any compensation." Moreover, the employer's contribution is measured by compensation "payable" for employment in each calendar month, and the employer's contribution report is made for a preceding quarterly period with respect to the compensation earned in the period. It follows that the statute of limitations upon assessment and collection of underpayments (including wage adjustments), begins to run, subject to the exceptions in Subsections (b) and (c) of Section 3312 of the Internal Revenue Code, from the date when the report for the quarterly period, in which the compensation was earned, was required to be filed.

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