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DEC 4-1951

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The Director of Retirement Claims

The Associate General Counsel

Questions on Railroad Retirement Act Amendments
of October 30, 1951

The answers to the questions submitted in your memorandum of
November 19, 1951 are as follows:

(1) Question: Section 5(1)(9) of the Act as amended October 30, 1951 provides that if the total compensation for any calendar year is less than \$3600 and the average monthly remuneration computed on compensation alone is less than \$300 and the employee has earned in such calendar year wages, as defined in Section 5(1)(6), such wages, in an amount not to exceed the difference between the compensation for such year and \$3600, is to be allowed.

In computing the employee's average monthly remuneration under this provision of the amended Act are we to credit the employee with wages in an amount not to exceed the difference between the total compensation for each year and \$3600 beginning with (1) January 1, 1937, or (2) with January 1, 1951, the earliest date on which wages up to \$3600 a year may be credited under the Social Security Act as amended in 1950, or (3) November 1, 1951, the date on which the Railroad Retirement Act amendments of 1951 were made effective?

We understand that the increase in benefits because of the crediting of additional compensation and wages under the amendments does not apply to insurance annuities accruing before November 1, 1951.

Answer: In computing the employee's average monthly remuneration under Section 5(1)(9) of the amended Act (Section 23(f), P.L. 234, 82nd Cong.), "wages" should be used to make up the full difference between total "compensation" in the year and \$3600 for all periods after 1936. While it was not until the enactment of P.L. 234, 82nd Cong., on October 30, 1951, that the amendments to the Social Security Act were effective, for our purposes, in raising to \$3600 the amount which could be considered "wages", there had been no restriction before October 30, 1951 on what amount of "wages" could be used in computing the average monthly remuneration, except that the

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total remuneration paid as "wages" which we could consider in the computation was \$3000. That limitation, but only that one, would still apply in computing our \$3600 maximum for periods before the enactment of the recent amendments.

(2) Question: Section 5(1)(9) of the 1951 amendments provide that if the exclusion from the divisor of all quarters beginning with the first quarter in which the employee was completely insured and had attained age 65 and the exclusion from the dividend of all compensation and wages with respect to such quarters would result in a higher average monthly remuneration, such quarters, compensation and wages shall be so excluded. In computing the basic amount based on an average monthly remuneration computed in accordance with this exclusion rule, will we use all increment years, i. e., through the quarter of death, or will we compute the increment years through the calendar quarter preceding the first quarter in which the employee was completely insured and had attained age 65?

Answer: The provision of Section 5(1)(9) of the Act as amended (Section 23(f), P.L. 234, 82nd Cong.), for exclusion of certain quarters in computing the average monthly remuneration when it would result in a higher average remuneration, affects only the determination of the average monthly remuneration. Accordingly, only to that extent would the computation of the "basic amount" which is provided for in Section 5(1)(10) of the Act be affected. There would be no effect on the calculation of the "increment years" which are provided for only in computing the "basic amount", pursuant to Section 5(1)(10), not the "average monthly remuneration".

(3) Question: Section 27(a) of the 1951 amendments provide that except as otherwise specifically provided, such amendments shall take effect with respect to benefits accruing under the Railroad Retirement Act and the Social Security Act after the last day of the month in which enacted, irrespective of when service and employment occurred or compensation or wages were earned.

Does this mean that where death occurred on or after October 30 but before November 1, 1951, that the basic amount on which the lump-sum death payment is based must be computed in accordance with the provisions in effect prior to the amendments since it appears that the amendment to Section 5(1)(9) becomes effective November 1, 1951, and the lump-sum death payment becomes due in the month of October 1950?

Answer: Section 25(a) of the 1951 amendatory act has to do only with "benefits accruing under the Railroad Retirement Acts

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and the Social Security Act after the last day of the month in which this Act is enacted", so that, plainly, it should have no effect on the computation of the lump-sum death payment due with respect to a death occurring on or after October 30, 1951, even if it occurred before November 1, 1951. I can see nothing otherwise in the amendments to prevent computing the "basic amount" in accordance with the Act as amended for purposes of the death payment in the case given even though the amendments would not operate to effect an increase in the monthly payments until November 1, 1951. In my opinion October 30, 1951, the date of enactment of the amendments, should be the breaking point under the rule that legislation is effective upon enactment unless otherwise provided.

(4) Question: Under the Social Security Act any quarter after the quarter in which the wage earner attained age 65, before 1939 is excluded from the divisor in computing the amount of the primary insurance benefit under the old PIB formula but included in computing the primary insurance benefit under the revised PIB formula. (SSA Claims Manual, Section 85.3; SSA Regulations No. 3, Section 403.302; SSA Claims Manual Supplement, Section 87.5). In computing the amount of the Social Security benefit using compensation as if it were wages under the Social Security Act for the purpose of applying the over-all minimum under Section 3(e) of the Act as amended on October 30, 1951, must we exclude such quarters from the divisor when the old PIB formula must be used in computing the primary insurance benefit under the Social Security Act? If so, must compensation for such quarters also be excluded?

Answer: In computing the minimum based on the Social Security formula in accordance with the proviso in Section 3(e) as amended (Section 8, P.L. 254, 82nd Cong.) the test is "the amount or the additional amount which would have been payable to all persons * * * under the Social Security Act * * * if such employee's service as an employee after December 31, 1956 were included in the term 'employment' as defined in that Act * * *". Accordingly, it is my opinion that if in computing the benefit payable under the Social Security Act quarters before 1939 are excluded from the divisor then we also would have to exclude such quarters in computing the amount of the minimum and, of course, if that would involve also the exclusion of "wages" under the Social Security Act then we would have to exclude, in our computation, the "compensation" for such quarters.

(5) Question: The Social Security Act as amended in 1950 provides that wages beginning with the first day of the second quarter before the quarter of death, entitlement or first eligibility are to

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be excluded from the total wages in computing the primary insurance benefit initially. However, that Act also provides for a lag re-computation six months after the month of filing in a live case and six months after the month of the wage earner's death or entitlement, whichever first occurred, in a survivor case. Any increase resulting from such lag re-computation is retroactive to the first month of entitlement.

In applying the over-all SSA minimum under Section 3(e) of the Act as amended on October 30, 1951, we must compute the SSA benefit to which such individual(s) is entitled, or would be entitled on proper application therefor. Presumably, this will require us to recompute the amount of the over-all SSA minimum six months after the quarter of filing, month of wage earner's death or entitlement, whichever the case may be. Administratively, however, it would be more expedient if it were possible to include the lag re-computation as an initial computation in determining the over-all SSA minimum. This would be possible because the Social Security Administration will always furnish the lag wages, i. e., wages earned in the period beginning with the first day of the second quarter preceding the quarter of filing, death or entitlement, whichever the case may be, because lag wages are required for computations of survivor benefits under the Railroad Retirement Act. Therefore, may we include such lag re-computation in our initial computations to determine the overall SSA minimum or must we wait six months before making the lag re-computation, even though any increase resulting from such computation would be retroactive to the first month of entitlement?

Answer: In determining the over-all Social Security minimum I see no reason for waiting six months to make the so-called "lag re-computation" when we have the information at hand to make the re-computation immediately, since any increase resulting from such re-computation would have to be retroactive to the first month of entitlement.

(6) Question: Under the Social Security Act in effect before the 1951 amendments, a wage earner became entitled to a work re-computation on proper application therefor. After the wage earners primary insurance benefit began to accrue he could apply for his first work re-computation at any time. However, second and subsequent re-computations were permitted only at intervals of not less than 12 months from the filing date of the last application for re-computation. An application for a work re-computation could be filed only if the wage earner was working for less than \$15 a month, or if working for more than \$14.99 a month if he indicated he would cease such work

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during the effective dates of his applications. (Social Security Administration Claims Manual, Sections 89.1 and 89.2.)

In applying the over-all SSA minimum we would not be able to determine when the individual worked for less than \$15 a month on the basis of the present wage and compensation data certified to us by the bureau of wage and service records. Neither would it be expedient for that bureau to furnish this information because a number of employees reported compensation to that bureau in yearly totals and not in monthly detail. Furthermore, where the employee also worked for wages covered by the Social Security Act, such wages are certified to us on a total yearly wage basis, showing the number of wage quarters established for the year. Consequently, would there be any legal objection to computing work recomputations where information furnished by either the Social Security Administration or the bureau of wage and service records indicates that the individual was not credited with a wage quarter of coverage for a calendar quarter and during such calendar quarter the employee did not render compensated service for at least one month?

Answer: There should be no objection to the procedure you suggest, in determining the Social Security minimum, for making the recomputation necessary on account of work done after acquiring entitlement, since in no case, I understand, could it result in an overpayment, and the effect in every case would be slight. Any determination made pursuant to such procedure, however, should be subject to correction if the applicant is able to establish that were the procedure prescribed by the Social Security Act followed his benefit would be larger.

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