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compensation reported for the period of those records.

[61 FR 31395, June 20, 1996]

§ 209.17 Use of payroll records as returns of compensation.

Payroll records of employers which have permanently ceased operations may be accepted in lieu of prescribed reports *provided that* there is no official of the employer available to prepare and certify to the accuracy of such reports and, *provided further that* any employer and employee tax liability incurred under the Railroad Retirement Tax Act has been discharged.

[61 FR 31395, June 20, 1996]

PART 210—CREDITABLE RAILROAD SERVICE

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AUTHORITY: 45 U.S.C. 231f.

§ 210.1 General.

An individual's entitlement to benefits and the amount of benefits payable under the Railroad Retirement Act are determined based, in part, on the individual's years of service. This part defines what the term service means under the Railroad Retirement Act and sets forth what types of service are creditable under that Act.

[49 FR 46731, Nov. 28, 1984]

§ 210.2 Definition of service.

Service means a period of time for which an employee receives payment from a railroad employer for the performance of work; or a period of time for which an employee receives compensation which is paid for time lost as an employee; or a period of time credited to an employee for creditable military service as defined in part 212 of this chapter. Service shall also include deemed months of service as provided under § 210.3(b) of this chapter and any month in which an employee is cred-

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ited with compensation under § 211.12 of this chapter based on benefits paid under title VII of the Regional Rail Reorganization Act of 1973.

[53 FR 17182, May 16, 1988]

§ 210.3 Month of service.

(a) *Reported.* A reported month of service is any calendar month or any part of a calendar month for which an employee receives compensation for services performed for an employer; or receives pay for time lost as an employee; or is credited with compensation for a period of creditable military service; or is credited with compensation under § 211.12 of this chapter based on benefits paid under title VII of the Regional Rail Reorganization Act of 1973.

(b) *Deemed.* A deemed month of service is any additional month of service credited to an employee subject to paragraphs (b)(1) and (2) of this section.

(1) An employee who is credited with less than twelve reported months of service for a calendar year after 1984 may be "deemed" to have performed service for compensation in additional months, not to exceed twelve, providing:

(i) The employee's compensation for the calendar year in question exceeds an amount calculated by multiplying the number of reported months credited for that year by an amount equal to one-twelfth of the current annual maximum for non-tier I components as defined in § 211.15 of this chapter; and

(ii) The employee maintains an employment relation to one or more employers or serves as an employee representative in the month or months to be deemed. For purposes of this section, employment relation has the same meaning as defined in part 204 of this chapter, disregarding the restrictions involving the establishment of such a relationship as of August 29, 1935. Employee representative has the same meaning as defined in part 205 of this chapter.

(2) Employees satisfying the conditions in both paragraphs (b)(1)(i) and (b)(1)(ii) of this section shall have their months of service for a calendar year calculated using the following formula:

$$\text{Months of service} = \frac{\text{Employee's creditable non-tier I compensation}}{\text{Maximum annual creditable non-tier I compensation} \div 12}$$

The quotient obtained using this formula equals the employee's total months of service, reported and deemed, for the calendar year. Any fraction or remainder in the quotient is credited as an additional month of service.

(3) *Examples.* The provisions of paragraphs (b)(1) and (2) of this section may be illustrated by the following examples.

Example (1): Employee B worked in the railroad industry in 1985 and was credited with nine reported months of service (January through September) and non-tier I compensation of \$20,000. The 1985 annual maximum for non-tier I compensation is \$29,700. B maintained an employment relation in the three months he was not employed in 1985. The following computations are necessary to determine if B has sufficient non-tier I compensation to be credited with deemed months of service.

- (1) Enter the annual maximum for non-tier I compensation for the calendar year.....\$29,700
 - (2) Divide line (1) by 12
\$29,700 ÷ 12\$2,475
 - (3) Enter the employee's reported months of service for the calendar year9
 - (4) Multiply line (2) by line (3) \$2,475 × 9\$22,275
 - (5) Enter the employee's non-tier I compensation for the calendar year.....\$20,000
 - (6) Subtract line (4) from line (5). Enter the result (but not less than zero). This is the employee's excess non-tier I compensation for the calendar year.
\$20,000 – \$22,2750
- a. If line (6) is zero, the employee does not have sufficient non-tier I compensation to be credited with deemed months of service.
- b. If line (6) is greater than zero, the employee has sufficient non-tier I compensation

to be credited with deemed months of service.

Since the amount on line (6) is zero, employee B does not have enough non-tier I compensation to be credited with deemed months of service. B is credited with only nine reported months of service for the year.

Example (2): Assume the same facts as in example (1), except that employee B was credited with non-tier I compensation of \$25,000 for 1985. The following computations are necessary to determine if B has sufficient non-tier I compensation to be credited with deemed months of service.

- (1) Enter the annual maximum for non-tier I compensation for the calendar year.....\$29,700
 - (2) Divide line (1) by 12
\$29,700 ÷ 12\$2,475
 - (3) Enter the employee's reported months of service for the calendar year9
 - (4) Multiply line (2) by line (3) \$2,475 × 9\$22,275
 - (5) Enter the employee's non-tier I compensation for the calendar year.....\$25,000
 - (6) Subtract line (4) from line (5). Enter the result (but not less than zero). This is the employee's excess non-tier I compensation for the calendar year.
\$25,000 – \$22,275\$2,725
- a. If line (6) is zero, the employee does not have sufficient non-tier I compensation to be credited with deemed months of service.
- b. If line (6) is greater than zero, the employee has sufficient non-tier I compensation to be credited with deemed months of service.
- Since the amount on line (6) is greater than zero, employee B has enough non-tier I compensation to be credited with deemed months of service. B now satisfies all the requirements for deeming, therefore his months of service for the calendar year are calculated using the formula in § 210.3(b)(2).

$$\text{Months of service} = \frac{\text{Employee's creditable non-tier I compensation}}{\text{Maximum annual creditable non-tier I compensation} \div 12}$$

$$(1) \text{ Months of service} = \frac{\$25,000}{\$29,700 \div 12} \text{ or } \$25,000 \div \$2,475$$

$$(2) \text{ Months of service} = \frac{\$25,000}{\$2,475} \text{ or } \$25,000 \div \$2,475$$

(3) Months of service = 25,000 ÷ 2,475 or 10.10

(4) Round the result in line (3) to the next higher whole number. This is the employee's total months of service for the calendar year.

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Employee B is credited with 11 months of service for 1985; nine reported months (January through September) and two deemed months (October and November).

[53 FR 17182, May 16, 1988]

§ 210.4 Year of service.

(a) A year of service is twelve months of reported or deemed service, consecutive or not consecutive. A fraction of a year of service is taken at its actual value.

(b) The term years of service means the total number of years an employee is credited with service as defined in § 210.2 of this part.

[49 FR 46731, Nov. 28, 1984, as amended at 53 FR 17183, May 16, 1988]

§ 210.5 Creditability of service.

(a) *Service before January 1, 1937.* (1) Service performed before January 1, 1937, is called prior service. Prior service is creditable under the Railroad Retirement Act if the employee had an employment relation with a railroad employer on August 29, 1935. Prior service may be combined with creditable service performed after December 31, 1936, to make the employee's total years of service equal, but not exceed, 30 years (360 months).

(2) An employee is considered to have an employment relation on August 29, 1935, if:

(i) The employee was on that date in active railroad service for an employer; or

(ii) The employee was on that date on a leave of absence expressly granted by the employer or the employer's authorized representative, but only if such leave of absence was established to the satisfaction of the Board before July 1947; or

(iii) The employee had 6 months of active railroad service for an employer during the period August 29, 1935, through December 31, 1945; or

(iv) The employee was not in the service of an employer by reason of a mental or physical disability from which the employee was continuously disabled until the employee attained age 65 or until August 1945; or

(v) Solely for the reason stated in paragraph (a)(2)(iv) of this section the employee was not recalled to active service before August 1945; or

(vi) If the employee was recalled, the employee was unable to perform 6 months of service during the period August 29, 1935, through December 31, 1945, solely for the reason stated in paragraph (a)(2)(iv) of this section.

(b) *Service after December 31, 1936.* All service performed after December 31, 1936, is creditable. If an employee has service both before January 1, 1937, and after December 31, 1936, all service after December 31, 1936, is credited first; if this service totals less than 30 years (360 months), then the service before January 1, 1937, is included but only up to the amount sufficient to make the total years of service equal 30. Where the years of service include only part of the service performed before January 1, 1937, the part included is taken in reverse order beginning with the last calendar month of the service.

(c) *Service after December 31, 1936, to a local lodge or division.* Services performed for a local lodge or division of a railway labor organization is creditable if the employee is credited with compensation as defined in § 211.2 of this chapter.

(d) *Service based on time lost.* Any month or any part of a month during which an employee performed no active service but received pay for time lost as an employee is counted as a month of service. Service for time lost as an employee shall be credited as provided for in § 211.3 of this chapter.

(e) *Place of performance of service.* (1) Service performed for an employer who

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conducts the principal part of its business with the United States is creditable. However, service performed for an employer who conducts the principal part of its business outside the United States is creditable only when the service is performed in the United States. If an employer, other than a local lodge or division or a general committee of a railway labor organization, does not conduct the principal part of its business within the United States, the service performed outside the United States for that employer is not creditable.

(2) Service performed outside the United States by an employee who is not a citizen or resident of the United States is not creditable if the employer is required under the laws of that place to hire, in whole or in part, only citizens or residents of that place.

(f) *Service as employee representative.* Service performed as an employee representative is creditable in the same manner and to the same extent as service performed for an employer.

(g) *Service performed after the beginning date of an annuity.* Service performed after the beginning date of an annuity shall be used in the annuity recomputation.

[49 FR 46731, Nov. 28, 1984, as amended at 53 FR 17184, May 16, 1988]

§ 210.6 Service credited for creditable military service.

Any calendar month in which an employee performed creditable military service, as defined in part 212 of this chapter, shall be counted as a month of service and shall be included in the employee's years of service, as provided for in § 210.5, provided that the employee has not previously been credited with reported or deemed service for an employer for the same month(s).

[53 FR 17184, May 16, 1988]

§ 210.7 Verification of service claimed.

Service claimed by an employee, which is not credited in the records of the Board, must be verified to the satisfaction of the Board before it may be credited. Verification of the Service claimed shall be as follows:

(a) Service claimed will be verified from the payroll or other detailed records of the employer.

(b) If the payroll or other detailed records are incomplete or missing, the service claimed and not established by these records will be verified from the personnel records of the employer.

(c) If the payroll, personnel and detailed records are incomplete or missing, the service claimed and not established by these records will be verified from any other books and records of the employer.

(d) If the employer's records do not establish the service claimed, the employee may submit affidavits and other evidence in support of the service claimed in either of the following instances:

(1) When there are no employer records available to show whether or not the service claimed was performed; or

(2) When there are employer records available which do not verify the service claimed and do not establish that the service claimed was not performed.

(e) When service is verified as to over-all dates, but is not supported in detail by employer records, and when there are no employer records showing in detail absences from service, a deduction shall be made to cover an average amount of the absences. The deduction shall be the absences shown by the applicant or 5 percent of the total period in question, whichever is greater. However, where the employee submits detailed records of the service claimed, properly identified and established as having been made at the time the employee performed the service for which detailed records of the employer are not available, full credit may be allowed for the service as may be verified from the records. Also, the employee may be permitted to establish in any other manner satisfactory to the Board the actual amount of his or her absences.

(f) For the purpose of verifying service before 1937, employers shall preserve through 1986, in accessible form, the original records of the service and compensation.

(g) For the purpose of verifying service after 1936, employers shall preserve in accessible form the original records

of service and compensation for a period of five calendar years after the due date of the report.

(Approved by the Office of Management and Budget under control numbers 3220-0003 and 3220-0008)

[49 FR 46731, Nov. 28, 1984, as amended at 52 FR 11016, Apr. 6, 1987]

PART 211—CREDITABLE RAILROAD COMPENSATION

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- 211.16 Finality of records of compensation.

AUTHORITY: 45 U.S.C. 231f.

SOURCE: 49 FR 46732, Nov. 28, 1984, unless otherwise noted.

§ 211.1 General.

Benefits under the Railroad Retirement Act are based in part on the individual's years of service and amount of compensation credited to the individual under the Act. This part defines what the term compensation means and sets forth the criteria applied in determining what payments are creditable as compensation under the Railroad Retirement Act.

§ 211.2 Definition of compensation.

(a) The term compensation means any form of payment made to an individual for services rendered as an employee for an employer; services performed as an employee representative; and any separation or subsistence allowance paid under any benefit schedule provided in conformance with title

VII of the Regional Rail Reorganization Act of 1973 and any termination allowance paid under section 702 of that Act. Compensation may be paid as money, a commodity, a service or a privilege. However, if an employee is to be paid in any form other than money, the employer and employee must agree before the service is performed upon the following:

(1) The value of the commodity, service or privilege; and

(2) That the amount agreed upon to be paid may be paid in the form of the commodity, service or privilege.

(b) Compensation includes, but is not limited to, the following:

(1) Salary, wages and bonuses;

(2) Pay for time lost as an employee;

(3) Cash tips of \$20 or more received in a calendar month;

(4) Vacation pay;

(5) Military pay as determined in § 211.7 of this part;

(6) Displacement allowances as provided for in § 211.8 of this part;

(7) Dismissal allowances as provided for in § 211.9 of this part;

(8) Separation allowances as provided for in § 211.10 of this part;

(9) Miscellaneous pay as provided for in § 211.11 of this part;

(10) Payments made under title VII of the Regional Rail Reorganization Act of 1973 as provided for in § 211.12 of this part.

(11) Payments paid to an employee or employee representative which are subject to tax under section 3201(a) or 3211(a) of the Internal Revenue Code of 1954 are creditable as compensation under the Railroad Retirement Act for purposes of computation of benefits under sections 3(a)(1), 3(f)(3), 4(a)(1) and 4(f)(1).

(12) Voluntary payments of any tax by an employer, without deducting such tax from the employee's salary.

(13) Payments made by an employer with respect to a deceased employee except as provided for in § 211.13 of this part.

(c) Compensation does not include:

(1) Tips, except as provided in paragraph (b)(3) of this section;

(2) Payments for services performed by a nonresident alien for the period the individual is temporarily present in the United States as a nonimmigrant