

RAILROAD RETIREMENT TAX ACT AMENDMENTS

 SEPTEMBER 22, 1976.—Ordered to be printed

Mr. LONG, from the Committee on Finance,
submitted the following

REPORT

[To accompany S. 3662]

The Committee on Finance to which was referred the bill (S. 3662) to amend the Railroad Retirement Act with respect to the computation of annuity amounts in certain cases, and for other purposes; having considered the same, reports favorably thereon without additional amendment and recommends that the bill do pass.

I. DESCRIPTION OF THE BILL

S. 3662 would make a number of mostly technical amendments to the Railroad Retirement Act of 1974. The bill was referred to the Committee on Finance because section 4 of the bill would amend the Railroad Retirement Tax Act. The provision of the bill within the committee's jurisdiction would exclude from the definition of "compensation" (1) nongovernmental sickness insurance and (2) legitimate travel expenses.

Exemption of sickness insurance premiums from payroll tax.—Under the Federal Insurance Contributions Act (Section 3(a)(2) of the code), payments (including amounts paid for insurance) to an employee or to his dependents because of sickness, accident disability, or for medical and hospital expenses in connection with sickness or accident disability are not considered wages for social security purposes when they are made under a plan or system of general applicability. Although exclusion of these payments from the definition of compensation has also been the practice under the Railroad Retirement Act, the lack of an explicit provision in that Act has led to some uncertainty as to the treatment which should be afforded payments of this type. The change proposed by the bill is intended to put an end

to this uncertainty by adding to the Railroad Retirement Tax Act the provision of the Federal Insurance Contributions Act which excludes sickness insurance from the definition of taxable wages for social security purposes.

Exemption of travel expense payments from payroll tax.—There is no explicit provision in the Social Security Act, the Federal Insurance Contributions Act, the Railroad Retirement Act, or the Railroad Retirement Tax Act governing the treatment of legitimate travel expenses. Under Revenue Ruling 75-279, these expenses are excluded from compensation under the Railroad Act if the railroad employer requires the employee to account for any travel allowance he receives. A similar regulation was in effect for social security tax purposes during the early years of the program but was replaced in 1950 by regulations which exempt travel expenses from the definition of wages when they are identified as such by the employer. Present regulations (26 CFR 31.3121(a)-1(h)) exclude from the definition of taxable wages for social security purposes:

Amounts paid specifically—either as advances or reimbursements—for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment.

The bill would amend the Railroad Retirement Act and the Railroad Retirement Tax Act by excluding from the definition of "compensation" certain legitimate travel expenses. The exclusion is similar to the exclusion which applies under present regulations to the taxability of travel expenses for social security purposes.

Effective date.—These amendments would be effective with respect to future tax payments and to prior tax payments for which the statute of limitations will not have run until six months after enactment.

The committee recognizes that the amendments made by section 4 of the bill are revenue matters which must originate in the House of Representatives. In reporting this bill, the committee understands that the provisions of S. 3662 will be offered as an appropriate amendment to the similar House-passed bill, H.R. 14041.

II. BUDGETARY IMPACT OF THE LEGISLATION

In compliance with section 252 (a) of the Legislative Reorganization Act of 1970 and sections 308 and 403 of the Congressional Budget Act of 1974, the committee states that section 4 of the bill would have no budgetary impact of any significance.

III. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made relative to the vote by the committee on the motion to report the bill. The bill was ordered reported by voice vote.

IV. CHANGES IN EXISTING LAW

In compliance with subsection (4) of the XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

INTERNAL REVENUE CODE OF 1954

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Subtitle C—Employment Taxes

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CHAPTER 22—RAILROAD RETIREMENT TAX ACT

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Subchapter D—General Provisions

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SEC. 3231. DEFINITIONS.

(a) EMPLOYER. * * *

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(e) COMPENSATION.—For purposes of this chapter—

(1) The term "compensation" means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers. Such term does not include [tips (except as is provided under paragraph (3)), or the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 3201.] *(i) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability, (ii) tips (except as is provided under paragraph (3)), (iii) the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 3201, or (iv) an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer provided*

any such payment is identified, by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment. Such term does not include remuneration for service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be. Compensation which is earned during the period for which the Secretary or his delegate shall require a return of taxes under this chapter to be made and which is payable during the calendar month following such period shall be deemed to have been paid during such period only. For the purpose of determining the amount of taxes under sections 3201 and 3221, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than \$25. Compensation for service as a delegate to a national or international convention of a railway labor organization defined as an "employer" in subsection (a) of this section shall be disregarded for purposes of determining the amount of taxes due pursuant to this chapter if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service" for purposes of the Railroad Retirement Act.

(2) An employee shall be deemed to be paid compensation in the period during which such compensation is earned only upon a written request by such employee, made within six months following the payment, and a showing that such compensation was earned during a period other than the period in which it was paid. An employee shall be deemed to be paid "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost.

(3) Solely for purposes of the tax imposed by section 3201 and other provisions of this chapter insofar as they relate to such tax, the term "compensation" also includes cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is less than \$20.

(f) **COMPANY.**—For purposes of this chapter, the term "company" includes corporations, associations, and joint-stock companies.

(g) CARRIER.—For purposes of this chapter, the term “carrier” means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act (49 U.S.C., chapter 1).

(h) TIPS CONSTITUTING COMPENSATION, TIME DEEMED PAID.—For purposes of this chapter, tips which constitute compensation for purposes of the tax imposed under section 3201 shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received; and tips so deemed to be paid in any month shall be deemed paid for services rendered in such month.

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