December 3, 1999

L-99-19

TO   : Frank J. Buzzi
             Chief Actuary

FROM   : Steven A. Bartholow
             General Counsel

SUBJECT: Supplemental Annuity Hour-Tax Rate

This is in response to your inquiry concerning the funding of accrued but unpaid supplemental annuities. Section 3(j)(1) of the Railroad Retirement Act of 1937 (37 Act) (45 U.S.C. 228c(j)(1)) provided for a supplemental annuity not to exceed $70 a month. Section 3(e) of the Railroad Retirement Act of 1974 (74 Act) (45 U.S.C. 231b(e)) provides for a supplemental annuity not to exceed $43 a month.[1] However, a transitional provision, section 205(a) of Public Law 93-445, provides that an individual who was awarded a supplemental annuity under the 37 Act shall be entitled to a supplemental annuity under the 74 Act of no less than the amount payable under the 37 Act.

Section 3221(c) of the Internal Revenue Code provides for an excise tax on employers to provide funds sufficient to pay for supplemental annuities at the level provided for under the 37 Act, as in effect on December 31, 1974. Section 15(a) of the 74 Act (45 U.S.C. 231n(a)) provides that for an appropriation to the Railroad Retirement Account (RR Account) of all monies covered in the Treasury under sections 3211(b), 3221(c) and 3221(d) of the Internal Revenue Code not needed to pay supplemental annuities under section 3(e) of the 74 Act and transitional provision section 205(a). On a quarterly basis, the Board is to determine what portion of the taxes collected under the above sections goes into the RR Account and what portion goes into the Railroad Retirement Supplemental Account (RRSA).

---

[1] **Under the 37 Act an annuitant in receipt of a supplemental annuity incurred a reduction in his regular annuity (see 45 U.S.C.   228f(a)(2)). Since there was no similar reduction provided for in the 74 Act, the rates under the 74 Act were roughly equivalent to the 37 Act rates. See Sen. Rep. No. 93-1163, 93rd Cong. 2d, Sess. (1974); reprinted in 1974 U.S.C.C.A.N. 5720, 5733.**

Frank J. Buzzi

Because section 3221(c) of the Internal Revenue Code requires that the excise tax be at such a level as to support a level of payment as if all supplemental annuities were paid under the 37 Act, there is a net gain to the RRAccount since actual payouts of supplemental annuities would be less than the tax revenue collected. This is because, as noted earlier, supplemental annuities payable under the 74 Act are at a lower rate than paid under the 37 Act. [2]

You advise that the Inspector General has determined that there were a number of supplemental annuities which were not paid or that have been paid incorrectly under the 74 Act. Corrective payments will be in the form of accrued supplemental annuities. You inquire whether in computing the accruals you should place the RRAccount in the same financial position as it would have been if these annuities were paid correctly in the first instance. This would require a transfer from the RRSA to the RRAccount.

It is our opinion that such a transfer should be made. Had these annuities been paid correctly in the first instance, they would have been funded at the 37 Act level and would thus have resulted in additional funds directed to the RRAccount. We believe that such a result is consistent with the Congressional intent in carrying over the supplemental annuity program into the 74 Act.[3]

---

[2] As indicated in note 1, under the 74 Act there is no reduction in the regular annuity formula as the result of the receipt of a supplemental annuity as was the case under the 37 Act. Thus, this "net gain" to the RRAccount is to make up in part for the loss to that Account as the result of the 74 Act.

[3] In the case where the supplemental annuity was paid incorrectly at the 74 Act rate, thus creating an overpayment, repayment of the annuities would be returned to the RRSA at the 74 Act rate. However, since these incorrect annuities were initially funded at the 37 Act rate (the excess going to the RRAccount), a transfer from the RRAccount to the RRSA account would be necessary to make the RRSA whole.

Frank J. Buzzi

Frank J. Buzzi