

## **PART VII Additional Communications about Service and Compensation Reports**

### **CHAPTER 1: Form BA-6, Certificate of Service Months and Compensation**

Form BA-6, Certificate of Service Months and Compensation, is issued annually. This form is the employee's record of creditable service and compensation reported by all covered employers. It also includes the deemed service months which may be credited to an employee, as described in Chapter 4 Part VIII. It does not, however, include creditable military service.

Form BA-6 also has information about separation allowance/severance pay and, the Tier II contribution amount. The procedures for protesting the information on the certificate, applying for benefits under the Railroad Unemployment Insurance Act, and visiting a field office of the Railroad Retirement Board (RRB) are included on the back of the form.

#### **Which Employees Will Receive Form BA-6?**

Forms BA-6 are prepared for all employees who received creditable compensation in the preceding calendar year, when such compensation was timely and correctly reported to the RRB. Only the first five letters of the employee's last name will appear on a certificate where the RRB has not yet verified the employee's social security number and name with the Social Security Administration. This usually occurs when the certificate year is the first year in which the employee worked in the railroad industry.

#### **Non-Receipt of Form BA-6**

Employers should advise an employee who does not receive a Form BA-6 after a reasonable period time that a certificate may be obtained from their local field office of the RRB, or by writing to the Chief of Compensation and Employer Services. Employees who do not know the telephone number for their local office may call the RRB toll-free help line at 1-800-808-0772. Information about local RRB offices are also on the Internet.

#### **Form BA-6 Cannot Be Mailed to an Employee if:**

- the employer's annual service and compensation report was received too late, or
- the employer's report contained an omission or error that prevented the employee's service and compensation from being processed, or
- the RRB has no address for the employee.

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**CHAPTER 2: Employee's Protest of Service and Compensation Record**

An employee who believes the amount of service and/or compensation reported for his or her account is incorrect should be advised to file a Form G-70, Protest of Record of Service Months and Compensation, with the Railroad Retirement Board (RRB). Forms G-70 are available from any local field office of the RRB, or employers may requisition them on Form G-615 from the Bureau of Supply and Service for availability to their employees.

The completed Form G-70 should be accompanied by substantiating evidence, such as payroll records. If evidence is not submitted, the RRB has no basis on which to request an adjustment report if the employer does not agree with the claim for additional service or compensation. Forms W-2 are useful but not entirely conclusive as evidence for a claim because gross income may include amounts not creditable as Tier I and Tier II compensation.

**Employee Protest Referred to Employer on Form GL-129**

Upon receipt of Form G-70 or any other written protest of record reported by a labor organization, Forms GL-129 and GL-129a (See Exhibits) are released to the NRO. The NRO must either correct the record with a Form BA-4 or verify that the account is correct as originally reported. If the account is correct as reported, a brief explanation refuting the employee's claim is needed so we may adequately reply to the employee. The following are common reasons which explain differences in service and compensation reported by the labor employer and that claimed by the employee:

- The employee also works for a carrier and combined earnings exceeded the maximum creditable compensation for the year.
- The employee claims service credit for the month in which compensation was paid, but credit was correctly reported for the month in which compensation was earned.
- The employee claims credit for the month in which compensation was earned, but the employer reports compensation generally when paid. This protest should be considered a request by the employee to have his compensation adjusted to an earned basis, and a Form BA-4 should be filed. See Part III, Chapter 1 for an explanation of reporting on an earned basis. See Part VI, Chapter 1 for instructions on completing Form BA-4.

An explanation is important because an employee has reconsideration rights in protesting his or her record if he or she believes the record is still incorrect, after our reply.

### **CHAPTER 3: Annuity Estimate Operation**

Our *Annuity Estimates Operation*, commonly referred to as "AESOP", provides employers with annually updated annuity estimates for their employees who meet the minimum service requirements for annuities under the Railroad Retirement Act. The estimates are based on the employee's cumulative railroad service and compensation through the previous calendar year and assume current year eligibility for an annuity. The estimate excludes creditable military service and is based on the date of birth shown on Form BA-6, Certificate of Service Months and Compensation. If the employee's actual date of birth differs from the date shown on Form BA-6, the annuity estimate may be inaccurate. Estimates are based on the current year. No projections are done through actual retirement age.

The estimates are released in a report format in early August. The reports are available on paper listings or on magnetic tape. They are sent to the person designated by the employer as the "AESOP" contact official.

Employer participation in this operation is voluntary. Employers who wish to receive an "AESOP" report should direct their request in writing to the Chief of Compensation and Employer Services. Requests received by June 1 will be included in the current year's estimate operation. Requests received after June 1 will be held until the following year.

#### **Individual Employee Annuity Estimates**

Individual annuity estimates are always available to employees through the local field office of the Railroad Retirement Board. Please do not refer individuals to the Chief of Compensation and Employer Services or the Quality Reporting Service Center for their annuity estimates.

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**CHAPTER 4: Requests for Adjustments and Clarification**

Employers may receive written requests, in the form of referrals or form letters, for adjustment to, or clarification of, previously submitted service and compensation reports. Some notices are merely advisory in nature about reports which have been processed. Others require a response from the employer in order to process a service and compensation report which is being held in abeyance, or suspended status, while awaiting correction from the employer.

**Form Letters (See Exhibits)**

- **Form GL-24:** This is a notice that the name and social security number the NRO reported do not agree with the name and social security number in SSA's records. This notice usually indicates that the NRO is using an incorrect social security number.
- **Form GL-77a:** This is a notice that the name reported for an account does not agree with the name previously reported. This notice usually indicates that a name change was not filed with the RRB or with SSA. In addition to providing the information requested on the letter, employers should advise the employee to file a name change with the RRB and/or SSA, if they have failed to do so.

**Referral Listings**

- **Advisement of reported non-critical errors:** These are notices of minor errors and discrepancies of which you should be aware. These errors do not prevent the processing of service and compensation to an employee's record but should be corrected before the next report is filed. For example, I. M. Happy may have been reported as I. N. Happy.
- **Requests for adjustments to reported service and compensation errors:** These errors do not prevent the processing of service and compensation to an employee's account, but an adjustment is required. If the employee record is not corrected prior to the employee retiring, the discrepancy may result in a delayed or inaccurate benefit. Usually these errors are relational in nature. For example, the reported Tier I and Tier II are both below the Tier II annual maximum compensation amount, but are not equal as they should be. In other words, either the Tier I amount is too high or the Tier II amount is too low.
- **Requests for corrections to reported service and compensation rejects:** Rejected items are not posted to the employee's account but are held in abeyance, or suspense, while awaiting a corrected report from the employer. Records may reject for many reasons most of them involving missing or inconsistent data. For example, the Form BA-3a, Annual Report of Creditable Compensation, reports ten service months as the total number for an employee, but it does not specify the months in the service months detail.

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An explanatory note is printed with each item on the referral listings. The error and the reject listings also show the original report information to assist employers in determining and filing corrections.

#### **Reject and Error Referrals and How to Work Them**

##### **General Instructions**

The first and most difficult step in handling the service and compensation referrals sent to you by the RRB is determining what is wrong. Some of the messages point directly to a single error and others are necessarily very general.

Once you have determined what data is in error, it will usually be clear how to correct the problem. The RRB uses basic dual-ledger accounting principles in processing adjustments. That is, if you filed a report for an incorrect year, you would correct this in two steps. First remove, or decrease, the service and compensation from the incorrect year. Second add, or increase, service and compensation for the correct year. By the same principle, if you under-reported Tier I compensation by \$150, the way to correct this is to increase Tier I compensation by \$150, not to file a new report with corrected totals. If you file an adjustment report to handle one referral and you get another referral, call the supervisor of our accounting section at (312) 751-3371 for assistance. Filing an adjustment which takes into account two previous reports is complicated and the RRB staff will be able to assist you.

A list of referrals organized in alphabetical order follows. The list includes the reason the referral was created and how to work it.

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**SERVICE AND COMPENSATION REFERRALS**

Alphabetical Order by Referral Message

**Adjustment beyond statute of limitations - S&C rejected**

This referral is produced when an adjustment is received which is beyond the four- year statute of limitations and the Form BA-4 did not identify the adjustment as a payment for time lost or explain the delay. For more information about the time frame for filing adjustments, see Part VII, Chapter 2.

You may call the supervisor of the Wage Accounting section at (312) 751-3371 and discuss the adjustment or you may write the explanation for not filing within the time frame on the referral and return it.

**Adjustment caused RUIA to become incompatible to Tier I/Tier II - S&C posted**

This referral is produced if, after the adjustment, there is one or no service months and the reported Tier I compensation is less than the monthly RUIA maximum but the reported RUIA compensation does not equal the reported Tier I compensation.

Prepare Form BA-4 to increase RUIA compensation to the amount of the Tier I compensation.

**Adjustment caused Tier II to become greater than Tier I - S&C posted**

This referral is produced when the adjustment results in the Tier II compensation being greater than the Tier I compensation. For more information about the relationship between Tier I and Tier II compensation see "Understanding Edit Checks of Tier I and Tier II Compensation" at the end of this chapter.

Determine the correct compensation and prepare Form BA-4 to either increase Tier I or decrease Tier II accordingly.

**Adjustment caused under reported Tier II - S&C posted**

This referral occurs when the adjustment causes the resulting Tier II compensation to be less than the Tier I compensation and Tier I is less than the Tier II annual maximum. For more information about the relationship between Tier I and Tier II compensation see "Understanding Edit Checks of Tier I and Tier II Compensation" at the end of this chapter.

Determine the correct compensation and prepare Form BA-4 to either increase Tier I or decrease Tier II accordingly.

**Adjustment results in invalid Tier I amount for year - S&C rejected**

This referral occurs when the adjustment decreases Tier I to zero but Tier II is greater than zero. For more information about the relationship between Tier I and Tier II compensation see "Understanding Edit Checks of Tier I and Tier II Compensation" at the end of this chapter.

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Determine the correct compensation and prepare Form BA-4 to either increase Tier I or decrease Tier II accordingly.

#### **Adjustment results in invalid Tier II amount for year - S&C rejected**

This referral is produced when the adjustment decreases Tier II to zero but Tier I is greater than zero.

Determine the correct compensation and prepare Form BA-4 to either increase Tier II or decrease Tier I accordingly.

#### **Adjustment results in negative service months count for year - S&C rejected**

#### **Adjustment results in negative total RUIA - S&C rejected**

#### **Adjustment results in negative total Tier I - S&C rejected**

#### **Adjustment results in negative total Tier II - S&C rejected**

All the referrals beginning "Adjustment results in negative.." are produced when an adjustment decreases service and/or compensation by an amount greater than the amount currently on record at the RRB. This may occur if the adjustment was sent in for an incorrect year or if the employer's record of service and compensation for this employee prior to the adjustment does not agree with the RRB record. If the employer and RRB records do not agree, it is advisable to determine the cause, but if that is not possible, an adjustment bringing the employee's record to the correct totals can still be filed.

Determine what the correct service and compensation should be and, using the information shown on the referral, create an adjustment to yield that result. For example, if one service month for March is the correct final result and RRB record shows three service months for March, April and May, prepare Form BA-4 to decrease April and May. Remember to also prepare an adjustment to offset the previous adjustment which rejected.

#### **Adjusted Tier II total is over the yearly maximum - S&C posted**

This referral is produced when the adjustment results in the Tier II compensation being greater than the annual Tier II maximum.

Prepare Form BA-4 to decrease Tier II to the annual maximum.

#### **Decrease adjustment with no previous activity - S&C rejected**

This referral is produced if a decrease adjustment is received and the employer had not filed an initial service and compensation report for that employee for that year. This most commonly occurs when an employee previously worked for a related railroad and the current railroad does not file the adjustment under the correct BA number. This may also occur if the Social Security Number or the year on the adjustment is in error or if the adjustment should have been an increase.

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Determine the correct SSN for the employee and the correct year, employer number, and type of adjustment. Prepare Form BA-4 with a two-line adjustment. The first line should remove the original report. Since the original report was a decrease adjustment, remove it with an identical increase adjustment. The second line will report the adjustment correcting the erroneous data.

**Duplicate service months reported - S&C rejected- S&C rejected**

This referral is produced if an increase adjustment includes service months which are already reported. This usually occurs when the compensation for a month is being increased and the service month is also included in the adjustment even though it was already reported.

Enter the correct service month information on the referral and return it to the RRB.

**Incompatible RUIA - S&C posted**

This referral is produced if there is one or no service months and the Tier I compensation is less than the monthly RUIA compensation but the RUIA compensation does not equal the Tier I compensation. If compensation for a year is paid in a single month, it is expected that all three compensation amounts would be equal. If Tier compensation is being reported on a paid basis but RUIA compensation is being reported on an earned basis and this accounts for the differences, explain this on the referral. Otherwise...

Prepare Form BA-4 to increase RUIA compensation to the amount of the Tier I compensation.

**Name does not match RRB records - S&C rejected**

This referral is produced if the name and SSN from the employer's report do not agree with the name and social security number established in RRB records. This referral could occur because the employer changed the employee's name in their records but did not notify the RRB. This referral could also occur if the SSN was shown incorrectly in the employer report and happened to match an existing SSN for a different employee.

Put the correct name and SSN on the referral and return it to the RRB.

**Name is missing - S&C rejected**

This literally means that you forgot to enter the employee's name on the report. We will not process a report without a name because the name is an important part of our verification process. Without the name verification, all reports with incorrect SSNs would be posted to the incorrect record. Missing names rarely occur, but occasionally a magnetic report will have missing data. Names can be shown right on the referral. Do not file an adjustment report to include or correct a name.

**Name misspelled - S&C posted**

This referral is produced if the name from the report matches the name in the RRB record except for one or two letters. This would indicate that either the employer or the RRB has misspelled the employee's name.



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If the RRB record is correct, no action is necessary except to ensure that any subsequent reports use the correct spelling of the name. If the RRB name is misspelled, please indicate the correct spelling on the referral and return to the RRB.

#### **Pay rate is missing - S&C posted**

Generally, this referral is informational only advising that pay rates need to be included in your next annual report. Missing pay rates delay the payment of unemployment and sickness benefits while the information is obtained from the employer. When missing pay rates become a serious problem to the payment of timely benefits, the RRB may require supplemental reports of pay rates from all employers who failed to include them on their annual reports.

#### **Reported RUIA is over the maximum - S&C posted**

This referral is produced if the RUIA compensation from the annual report exceeds 12 times the monthly RUIA maximum.

Determine the correct RUIA compensation and prepare Form BA-4 to decrease the reported RUIA accordingly.

#### **Reported Tier I is over the maximum - S&C posted**

#### **Reported Tier II is greater than the yearly maximum - S&C posted**

This referral is produced if the Tier I from the annual report is greater than the Tier I annual maximum for the year. This may occur if the employer was using the wrong Tier I maximum or if two of the digits were reversed or if the decimal was in the wrong place.

Determine the correct Tier I compensation and prepare Form BA-4 to decrease the reported Tier I accordingly.

#### **Service and compensation after date of death - S&C posted**

This referral is produced if the employer reports a service month on the annual report which is after the month of death in the RRB record. This could occur if the employer erroneously reported service when service was not creditable or if the RRB received an erroneous notice of death.

Determine if the employee is due service for the months referred. If not, prepare Form BA-4 to remove the erroneous months. If the employee actually worked in the months or otherwise earned the service, notate this on the referral and return to the RRB.

#### **Sick pay after date of death - Sick pay posted**

This referral is produced if sick pay is reported for a year after the employee's year of death. Payments made to an employee's estate or survivor in the year following the

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employee's death are not creditable or taxable. This includes regular compensation as well as sick pay compensation.

Prepare Form BA-10 to remove the sick pay reported for any years after the year of death.

**Sick pay is over Tier I maximum - Sick pay posted**

This referral is produced if sick pay is reported in an amount which exceeds the Tier I annual maximum for the year. This referral usually results because a decimal is in the wrong place or two digits have been inverted.

Determine the correct amount of sick pay for the year. Prepare Form BA-10 to reduce sick pay compensation in RRB records accordingly. Your employer records may or may not contain the same error.

**Tier II is greater than Tier I - S&C posted**

This referral is produced if Tier II compensation on an annual report is greater than Tier I compensation. If credited correctly, Tier II will be either less than or equal to Tier I compensation.

Determine whether Tier I is under-reported or Tier II is over-reported and prepare Form BA-4 to adjust compensation accordingly.

**Tier II may be under-reported - S&C posted**

This referral is produced if the Tier II compensation on an annual report is less than the Tier I compensation and Tier I is less than the Tier II maximum compensation. See "Understanding Edit Checks of Tier I and Tier II Compensation" at the end of this chapter for more information.

Determine whether Tier I is under-reported or Tier II is over-reported and prepare Form BA-4 to adjust compensation accordingly.

**Tier I is missing - S&C rejected**

This referral is produced if the Tier I compensation on an annual report is zero but the Tier II compensation is greater than zero. If Tier I compensation is correctly reported as zero, then the Tier II compensation should also be zero. If Tier II compensation is greater than zero, then

Tier I compensation should be greater than zero. See "Understanding Edit Checks of Tier I and Tier II Compensation" at the end of this chapter for more information.

Determine whether Tier I is under-reported or Tier II is over-reported and prepare Form BA-4 to adjust compensation accordingly.

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#### **Tier II is missing - S&C rejected**

This referral is produced if the Tier II compensation on an annual report is zero but the Tier I compensation is greater than zero. If Tier II compensation is correctly reported as zero, then the Tier I compensation should also be zero. If Tier I compensation is greater than zero, then

Tier II compensation should be greater than zero. See "Understanding Edit Checks of Tier I and Tier II Compensation" at the end of this chapter for more information.

Determine whether Tier II is under-reported or Tier I is over-reported and prepare Form BA-4 to adjust compensation accordingly.

#### **Total Service months greater than detail - S&C rejected**

This referral is produced if the total service months from the annual report are greater than the sum of the individual months.

Determine if the total is incorrect or if an additional month(s) should be reported. Enter the correct service month information on the referral and return to the RRB.

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#### **PART VIII Issues of Limited Applicability to Labor Employers**

##### **CHAPTER 1: Separation/Severance Payments and Dismissal Allowances**

Payments that result from the abolition of an employee's job may be known as separation, severance, termination, coordination, dismissal, continuation, or guarantee payments or allowances. By whatever name they are called, they constitute creditable and taxable compensation. The regulations of the Railroad Retirement Board (RRB) distinguish between separation or severance allowances and dismissal allowances. These two types of payments are creditable in different ways.

##### **Terminology**

The name the employer gives the allowance does not govern the rules under which the payment is taxed and credited. If the terms of an agreement meet the definition of a dismissal allowance, but the employer calls it a separation allowance, the rules for a dismissal allowance still apply.

##### **Separation Allowance**

Under the Railroad Retirement Act (RRA) and Railroad Unemployment Insurance Act (RUIA), if an employee relinquishes job rights for the purpose of receiving an allowance, the payment is considered to be a separation allowance. A separation allowance is considered earned in the month that the employee fulfills the conditions necessary to receive the pay, which is usually the month in which the employment relation is severed or the month last worked. Consequently, for employers electing to report on an earned basis, the entire separation allowance should be reported as service and compensation in the month the employee relinquished employment rights or the month last worked.

Employers electing to report compensation on a paid basis, will report the separation allowance paid in the year as compensation on their annual report for that year. This is true regardless of whether the payment is made in a lump sum or in periodic installments. Employers electing to report compensation on an earned basis, should report the entire amount of the allowance to the year last worked or to the year of separation, up to the annual maximum. If the compensation exceeds the maximum for that year, the excess Tier I compensation is reported as miscellaneous compensation on Form BA-10. See Chapter 2 of this part.

Separation allowances and severance payments are not subject to conversion to work hours for the purpose of paying supplemental tax.

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#### **Dismissal Allowance**

If, according to the terms of the agreement, the employee retains a genuine employment relation within the meaning of the RRA, and receives monthly or periodic payments, the payment is considered a dismissal allowance, not a separation allowance. The following, although not exhaustive, is evidence of an employment relation:

- the agreement provides that the employee does not relinquish employment rights until the end of the period covered by the allowance;
- the employee may be recalled during the period of the allowance;
- the employee remains covered under various employee plans; or
- the employee continues to receive employee benefits.

A dismissal allowance is a type of pay for time lost, as described in Part III, Chapter 7, and is creditable as service and compensation. Whereas most pay for time lost is awarded retroactively to a prior period where earnings were lost, a dismissal allowance is usually paid as part of current payroll. For reporting purposes, a dismissal allowance appears on the report as though the employee had continued to work during the period of the allowance.

#### **Example of Separation vs Dismissal Allowance**

Here is an example illustrating the difference between a separation allowance and a dismissal allowance. Employee Morris Code last worked in June 1997 at which time his job was abolished. He agreed in June 1997 to accept a monthly payment of \$1,000 for two years beginning in July 1997. During the two years, Mr. Code retained various employee benefits. At the end of two years, he will relinquish his employee rights. Mr. Code is considered to be in receipt of a dismissal allowance. Compensation should be reported as follows: \$6,000 for 1997, \$12,000 for 1998 and \$6,000 for 1999. Service months should be reported for the 24 months from July 1997 through June 1999.

Employee Bennie Fit last worked in June 1997 at which time his job was abolished. He agreed in June to accept \$24,000, paid in 24 monthly installments, in consideration of his immediate resignation. No service months are creditable after June 1997 because no employment relation existed. Employers who elect to report compensation on an earned basis should credit all the compensation to June 1997, up to the 1997 annual maximum earnings bases. The money paid to Mr. Fit in 1998 and 1999, would be reported to 1996 by way of an adjustment on Form BA-4. Employers who elect to report compensation on a paid basis should report the compensation actually paid in 1997, 1998, and 1999, on their annual reports for those years without crediting additional service months.

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As illustrated above, the creditability of payments paid in consideration of termination of employment cannot be determined solely by when the payment is made and taxed. The date of the cessation of a genuine employment relation must also be considered when determining the period to which compensation is creditable.

#### **Form BA-9, Report of Separation Allowance or Severance Pay**

Whenever you make separation allowance or severance payments to an employee, such payments are to be reported to the RRB on Form BA-9, Report of Separation Allowance or Severance Pay. This report is needed to establish a disqualification period for unemployment and sickness benefits and to calculate any Separation Allowance Lump Sum benefit due at retirement. Information on Form BA-9 may also be used to make deemed service month determinations.

It is to the employer's advantage to timely file Form BA-9. If Form BA-9 is not filed and a disqualification period is not established, unemployment benefits could be overpaid and the experience-rated contribution rate inflated. The absence of Form BA-9 may also result in employee inquiries.

#### **Separation Allowance Paid with Other Payments**

If both a separation allowance and some other payment are being paid at the same time, it is preferable if the two payments are issued separately. This will make clear to both the employee and the RRB, the amount of separation allowance which is subject to Tier II tax. If a separation payment and another payment are combined, the Tier II tax on the pay receipt may not agree with the amount reported on Form BA-9 as subject to Tier II tax. Any such differences must be resolved. Separate payments will help to prevent unnecessary inquiries to the employer for clarification.

#### **Filing Instructions for Reports of Separation Allowance or Severance Pay**

Form BA-9, Report of Separation Allowance or Severance Pay, is due at the (RRB) no later than the last day of the month following the end of the quarter in which the separation or severance was paid. For example, reports of payments made during April through June 1997 are due at the RRB no later than July 31, 1997. While the filing of quarterly reports is required, you may file more often. It may be more convenient to file the forms on a monthly basis or each time you make a separation or severance payment.

#### **Report Purposes**

The report of separation allowance/severance pay is used for two purposes: to establish a disqualification period under the RUIA and to establish eligibility for an additional lump sum benefit under the RRA. If you fail to file Form BA-9 timely, no disqualification period will be established. Without the establishment of a disqualification, RUIA benefits may be paid improperly, which erroneously inflates the employer's RUIA contribution rate. It is important that you file Form BA-9 timely because benefits under both the RUIA and RRA may be affected.

Adjustments to reported severance pay are made on Form BA-9 also. Instructions on the reverse side of the paper form explain how to notate a Form BA-9 entry as an adjustment. Do not complete Form BA-9 to report a monthly dismissal allowance.

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Form BA-9 is not used to update an employee's service and compensation record. The creditable compensation which results from a separation allowance or severance payment must be reported as regular compensation on Form BA-3a, or on Form BA-4, as appropriate. Separation allowance or severance pay may become miscellaneous compensation if the payment meets all of the conditions of miscellaneous pay as described in Chapter 2 of this Part. In such situations, the creditable compensation is reported on Form BA-10 as miscellaneous compensation.

**Severance Pay/Separation Allowance and Earned/Paid Reporting**

There are no special instructions for completing Form BA-9 based on whether you report compensation on an earned or paid basis. This is because it is assumed, prior to completing Form BA-9, that you have already correctly taxed and reported the separation allowance using the method (earned/paid) you have chosen. You then report on Form BA-9 the amount of the separation allowance that was already subject to tax and the amount that was already reported as compensation for the reporting period. If the separation allowance was paid out over a period, it may be necessary to file more than one Form BA-9.

**CHAPTER 2: Miscellaneous Compensation and Sick Pay**

Miscellaneous compensation is any payment which is subject to Tier I taxes and is creditable as Tier I compensation, but cannot be credited as regular compensation. Employer's may use the "miscellaneous compensation" or "miscellaneous payments" to mean a variety of things, but "miscellaneous compensation," as referred to in these instructions, must meet these conditions:

- the payment is subject to railroad retirement tax;
- the payment is remuneration for services rendered in an earlier year;
- the payment cannot be credited to the earlier year because the employee already has maximum Tier I compensation credit in that year; and
- the payment cannot be credited to the year when the payment is made because no service was performed in the year of payment and the employer reports compensation generally on an earned basis. See Part III, Chapter 1 for an explanation of earned basis.

Because of regulations adopted in 1993 and related system improvements, an employer reporting compensation on a paid basis should include all creditable compensation in their annual report for the year and limit the use of Form BA-10, Report of Miscellaneous Compensation and Sick Pay, to reporting sick pay.

An employer reporting compensation generally on an earned basis, may continue to use Form BA-10 to report miscellaneous compensation which meets the above conditions.

**Example of Miscellaneous Compensation**

An employee resigns on 12/31/97 and retires 1/01/98. He earned and received payments totaling \$63,000 in 1997, and received a payment of \$3,700 in March 1998 for his last pay period in 1997, for vacation pay and other benefits earned but not paid in 1997. Because the employer generally reports on an earned basis, the employer filed an adjustment increasing 1997 compensation by an additional \$2,400 bringing the total compensation for 1997 to the maximum of \$65,400. The remaining \$1,300 paid in 1998 is reported as miscellaneous compensation for 1998.

You will note that the entire \$3,700 paid in 1998 is subject to 1998 Tier I, Tier II and Medicare taxes. While the taxable and creditable compensation are not always equal for each year, particularly for employers who report compensation on an earned basis, the amounts will usually be equal in the aggregate for all years. In this example, the creditable Tier I compensation (after the adjustment) for 1997 is \$65,400 and for 1998 is \$1,300. The total creditable compensation for the two years is \$66,700. The taxable compensation for 1997 is \$63,000 and for 1998 is \$3,700 for a total of \$66,700.



**Miscellaneous Compensation Used in Annuity Calculation**

Because sick pay and miscellaneous pay are both creditable only as Tier I compensation, they are reported separately from regular earnings to help ensure the integrity of our records. Although sick pay and miscellaneous compensation are reported and maintained at the RRB in a record which is separate from the regular service and compensation record, all the Tier I compensation is considered together in calculating the Tier I component of an employee's annuity.

**Sick Pay Paid by the Labor Organization**

Sick pay is compensation paid under a plan or agreement available on the same basis to employees in a like class and payable for days not worked on account of injury, illness, sickness, disease, pregnancy, or childbirth. If an employee receives his or her regular earnings, wages, or salary while off sick, this is not sick pay but regular earnings. If your organization pays sick pay to your employees, request a copy of The Reporting Instructions for Creditable Sickness Payments from the RRB's Quality Reporting Service Center.

**CHAPTER 3: Contract Services**

If a labor organization contracts work with individuals not covered under the Railroad Retirement Act (RRA) and Railroad Unemployment Insurance Act (RUIA), this may allow the non-covered employees to be covered under the Acts as though they were railroad employees. For this to occur, the non-covered employees would have to be determined to be in an employee relationship to the labor organization.

The Railroad Retirement Board uses definitions of "employee" and "service" in the RRA and RUIA as well as principles of common law to determine whether a business relationship is that of an employer-employee or that of an independent contractor.

The primary basis of such coverage is Sections 1(b) of the RRA and 1(b) and 1(e) of the RUIA which define an employee as an individual in the service of an employer. Section 1(d)(1) of the RRA further characterizes "in the service of an employer" as either:

- subject to the employer's continuing authority to direct the work, or
- rendering professional or technical services and is integrated into the staff of the employer, or
- rendering, on the property of the employer's operations, personal services which are integrated into the employer's operations.

**Subject to the Employer's Authority**

A person is an employee if the employer for whom he or she works has the right to direct and control the way he or she works both as to the final result and as to the details of when, where, and how the work is to be done. The employer need not actually exercise control. It is sufficient that the employer has the right to do so.

**Rendering Technical Services**

Some services, such as bookkeeping, which are not necessarily associated solely with the railroad industry, may be performed by individuals integrated into the overall railroad staff or by individuals in a distinctly independent trade or business.

**Rendering Integrated Services on Employer's Property**

One indication of employee status would be performance of a service which by its nature is so integrated into the railroad's operation that it must be performed under the railroad's control. Therefore, if an individual, nominally on the payroll of a hiring agency, performed service for a railroad which is clearly an integral part of the railroad's operation, such as locomotive engineer, signalman, or maintenance of way, it would appear that individual would be an employee under the RRA and RUIA.

**Criteria which point to the existence of an employee status:**

- the performance of work on the employer's premises;
- execution of a contract for continuing services over a long or indefinite period;
- devotion of substantially all of a person's working time to such services;
- the performance of duties similar to those previously performed as an employee; and
- the periodic payment of regular remuneration rather than payment for a specific result or work product.

**Criteria which point to an independent contractor status:**

- setting-up of an independent office or the performance of the work in places not associated with the employer's premises;
- performance of similar services for persons other than the employer;
- complete freedom as to the amount of time to be expended in rendering a particular service;
- agreements for the performance of services of a limited time period on a particular project; and
- payments for a particular result accomplished rather than regular remuneration on a time basis.

**Who Makes the Decision**

The three-member Board, based upon the recommendation of the General Counsel is responsible for making determinations of employee status. No single guideline in this chapter is controlling in a particular case but, together with like matters which the case may involve, forms a basis for a determination.

While employers may make the initial employment status decision, that decision may later be subject to investigation by the Division of Audit and Compliance in the Bureau of Fiscal Operations. Their findings are then forwarded to the General Counsel who will make a recommendation to the Board. Coverage examiners from the Division of Audit and Compliance will solicit information regarding the contract(s), using the Internal Revenue Service criteria which points to the existence of an employee status versus independent contractor status. The investigation may include an on-site inspection.

**CHAPTER 4: Form Letter GL-99, Employer's Deemed Service Months Questionnaire**

In order to complete Form Letter GL-99, an understanding of deemed service months is necessary.

**Deemed Service Months**

Because of changes in the Railroad Retirement Act, effective January 1, 1985, additional service months may be deemed in some cases where an employee does not actually work in every month of the year. An employee may never be credited with more than 12 service months in any calendar year and the employee must be in an employment relation with a covered railroad employer in order for that month to be deemed.

To determine the maximum number of deemed months for an employee for a year, 1) multiply the number of reported service months by 1/12 the annual Tier II maximum compensation for the year; and 2) subtract this product from the reported Tier II compensation. If the result is zero or negative, no deemed months are possible. If the result is a positive amount, 3) divide by 1/12 the Tier II maximum compensation, and 4) round up to a whole number. This is the maximum or potential number of deemed service months. The actual number of deemed service months will depend on whether the employee has an employment relation in the months not worked.

**Example of Allocating Service When Deemed Service Months are Involved**

Employee Bob Brakeman worked from January through April 18, 1997, when he was injured on the job. Mr. Brakeman returned to work on October 6, 1997, and worked through December. Mr. Brakeman was reported to have service months of January through April and October through December and creditable compensation of \$38,956. Based on the creditable Tier II earnings, Mr. Brakeman would be entitled to 10 months. Since 7 months were reported, an additional 3 months may be deemed. ( $\$38,956 \div 4050 = 9.6$ , rounded up to 10 total months. The 4050 is the 1997 Tier II earnings base of \$48,600 divided by 12.) Because Mr. Brakeman has an employment relation in all months in 1997, the months of May, June, and July are deemed as service months.

**Form GL-99, Employer's Deemed Service Months Questionnaire**

Employers do not report deemed service months and the deeming of service months has no effect on the employer's report of service and compensation or tax liability. Deemed service months are determined and recorded by the Railroad Retirement Board. Where the employee's Tier II compensation would yield additional service but an employment relationship is not apparent, the employer must provide that information by responding to Form GL-99.

Form GL-99 is designed to obtain information whether an employment relation exists in certain months. The person completing the form need only answer "Yes" or "No" to question 8. The remarks section is for supplementary information you may wish to provide; it should not be used in lieu of answering question 8 directly. A prompt reply will eliminate the need for the RRB to trace for GL-99 replies.

**Note: Form GL-99 also requires a Form BA-4, Report of Creditable Compensation Adjustments, in addition to a response if you advise that the service and/or compensation previously reported was incorrect.**

**CHAPTER 5: Form Letter GL-132, Annuitant Return to Service****Why is Form Letter GL-132 Sent?**

Form Letter GL-132 is designed to determine if a reported service month(s) after an annuitant's annuity beginning date is properly credited. An annuity under the Railroad Retirement Act (RRA) is not payable for any month in which an employee works or otherwise earns creditable service from an employer covered under the RRA. If service is reported for a month that is after the month an employee was awarded an annuity under the RRA, a Form Letter GL-132 will be sent to clarify the report.

It is important that the responses to GL-132 letters are properly completed because the Railroad Retirement Board must take subsequent action to recover legitimate benefit overpayments which employer responses ascertain.

**Completing Form Letter GL-132**

To complete Form Letter GL-132, first refer to the service month detail in Part I. A "1" indicates a reported service month and a "0" indicates that no service month was reported. Review the service month information for accuracy. Go to Part II and

- **Check the first response if the service month detail is incorrect.** The RRB will remove the service month(s) from the annuitant's record. **You do not need to file Form BA-4, Report of Creditable Compensation Adjustments.**
- **Check the second response if the service month detail is correct** and provide an explanation of the type of payment that produced the service month(s) under review.
- If neither of the two responses applies, call a Wage Accounting Examiner at (312) 751-3371 for further instructions.

When completing this form, an important reporting principle to remember is that service is always creditable when the service is performed, not when the payment is made and taxed. Service should never be reported for a month after the relinquishment of the employment relationship.