

## Railroad Retirement Board

## § 209.16

earnings, which includes all compensation taxable under the hospital insurance portion of the tier I tax rate. Employers with 5,000 or more employees shall provide a monthly or quarterly breakdown of the year's earnings. Employers with fewer than 5,000 employees may submit an annual amount only, although a monthly or quarterly breakdown is preferable. Gross earnings are to be counted for the same time period as used in determining the employer's annual report of creditable compensation. The reports are to be prepared in accordance with prescribed instructions and filed in accordance with §209.4 of this part.

(Approved by the Office of Management and Budget under control number 3220-0132)

[49 FR 46729, Nov. 28, 1984, as amended at 55 FR 26430, June 28, 1990; 57 FR 4365, Feb. 5, 1992; 59 FR 2292, Jan. 14, 1994. Redesignated and amended at 63 FR 32613, 32614, June 15, 1998]

### §209.14 Report of separation allowances subject to tier II taxation.

For any employee who is paid a separation payment, the employer must file a report of the amount of the payment. This report shall be submitted to the Board on or before the last day of the month following the end of the calendar quarter in which payment is made. The report is to be prepared in accordance with prescribed instructions and filed in accordance with §209.4 of this part.

(Approved by the Office of Management and Budget under control number 3220-0173)

[63 FR 32614, June 15, 1998]

### §209.15 Compensation reportable when paid.

(a) *General.* In preparing a report required under this part, an employer may report compensation in the report required for the year in which the compensation was paid even though such compensation was earned by the employee in a previous year. If compensation is reported with respect to the year in which it was paid, it shall be credited by the Board to the employee in such year unless within the four year period provided in §211.15 of this chapter the employee requests that such compensation be credited to the

year in which it was earned. If the employee makes such a request, and the Board determines that the compensation should be credited to the year in which it was earned, the reporting employer must file an adjustment report as required by §209.9 of this part which reports such compensation in the year in which it was earned. The employee may revoke his or her request anytime prior to the filing of the adjustment report. Upon the Board's receipt of the adjustment report, the request becomes irrevocable.

(b) *Pay for time lost.* Compensation which is pay for time lost, as provided in §211.3 of this chapter, shall be reported with respect to the period in which the time and compensation were lost. For example, if an employee is off work because of an on-the-job injury for a period of months in a given year and in a later year receives a payment from his or her employer to compensate for wages lost during the period of absence, the employer must, by way of adjustment provided for in §209.9 of this part, report the compensation with respect to the year in which the time and compensation were lost.

(c) *Separation allowance or severance pay.* A separation allowance or severance payment shall be reported in accordance with §209.14 of this part.

(d) *Miscellaneous pay.* Miscellaneous pay, as defined in §211.11 of this chapter, shall be reported in the year paid and reported on the annual report of compensation as provided for in §209.8 of this part.

(e) *Vacation pay.* Vacation pay may be reported in accordance with this section except that any payments made in the year following the year in which the employee resigns or is discharged shall be reported by way of adjustment under §209.9 of this part as paid in the year of resignation or discharge.

[58 FR 45250, Aug. 27, 1993, as amended at 63 FR 32614, June 15, 1998]

### §209.16 Disposal of payroll records.

Employers may dispose of payroll records for periods subsequent to 1936, *provided that* the payroll records are more than five years old and that there is no dispute pending pertaining to the

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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: