

§ 404.1408

benefits based on the combined record of earnings and compensation to which such widow, widower or parent might become entitled, but only to the extent that widow's, widower's or parent's benefits may be payable under the regulations of this part to such widow, widower or parent, as the case may be, solely on the basis of the wages and self-employment income of such deceased individual and without regard to any compensation which may be treated as wages pursuant to § 404.1408.

[42 FR 18273, Apr. 6, 1977]

§ 404.1408 Compensation to be treated as wages.

(a) *General.* Where pursuant to the preceding provisions of this subpart, services rendered by an individual in the railroad industry are considered to be employment as defined in section 210 of the Social Security Act (see § 404.1027 of this part). Thus, any compensation (as defined in section 1(h) of the Railroad Retirement Act of 1974 or prior to the 1974 Act, section 1(h) of the Railroad Retirement Act of 1937) received by such individual for such services shall constitute wages, provided that the provisions of § 404.1406 do not operate to bar the payments of benefits under title II of the Social Security Act.

(b) *Military Service Exception.* An exception to paragraph (a) of this section applies to any compensation attributable as having been paid during any month on account of military service creditable under section 1 of the Railroad Retirement Act of 1974 (or section 4 of the Railroad Retirement Act of 1937 prior to the 1974 Act). Such compensation shall not constitute wages for purposes of title II of the Social Security Act if, based on such services, wages are deemed to have been paid to such individual during such month under the provisions described in §§ 404.1350 through 404.1352 of this part.

[65 FR 16813, Mar. 30, 2000]

§ 404.1409 Purposes of using compensation.

Compensation which is treated as wages under § 404.1408 shall be used, together with wages (see subpart K of this part) and self-employment income

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(see subpart K of this part), for purposes of:

(a) Determining an individual's insured status for monthly benefits or the lump-sum death payment (see subpart B of this part);

(b) Computing such individual's primary insurance amount (see subpart C of this part);

(c) Determining an individual's entitlement to the establishment of a period of disability (see subpart B of this part for disability insured status requirements); and

(d) Applying the deduction provisions of section 203 of the act (see subpart E of this part).

[25 FR 5183, June 10, 1960]

§ 404.1410 Presumption on basis of certified compensation record.

(a) *Years prior to 1975.* Where the Railroad Retirement Board certifies to SSA a report of record of compensation, such compensation is treated as wages under § 404.1408. For periods of service which do not identify the months or quarters in which such compensation was paid, the sum of the compensation quarters of coverage (see § 404.1412) will be presumed, in the absence of evidence to the contrary, to represent an equivalent number of quarters of coverage (see § 404.101). No more than four quarters of coverage shall be credited to an individual in a single calendar year.

(b) *Years after 1974.* Compensation paid in a calendar year will, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in railroad service. (For years prior to 1975, see § 404.1412.)

(c) *Allocation of compensation to months of service.* If by means of the presumptions in this section an individual does not have an insured status (see subpart B of this part) on the basis of quarters of coverage with which he is credited, or a deceased individual's primary insurance amount (see § 404.201) may be affected because he attained age 22 after 1936, the Administration may request the Railroad Retirement Board to furnish a report of the months in which such individual rendered service for compensation which is treated as wages under

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§ 404.1408 if it appears the identification of such months may result in an insured status or if it will affect such primary insurance amount.

(d) *Effect of self-employment income and maximum earnings.* However, if such individual also had self-employment income for a taxable year and the sum of such income and wages (including compensation which is treated as wages under § 404.1408) paid to or received by him during such taxable year equals the following amounts, each calendar quarter any part of which falls in such taxable year, shall be a quarter of coverage:

- (1) After 1950 and prior to 1955, equals \$3,600 of remuneration;
- (2) After 1954 and prior to 1959, equals \$4,200 of remuneration;
- (3) After 1958 and prior to 1966, equals \$4,800 of remuneration;
- (4) After 1965 and prior to 1968, equals \$6,600 of remuneration;
- (5) After 1967 and beginning prior to 1972, equals \$7,800 of remuneration (including a fiscal year which began in 1971 and ended in 1972);
- (6) Beginning after 1971 and prior to 1973, equals \$9,000 of remuneration;
- (7) Beginning after 1972 and prior to 1974, equals \$10,800 of remuneration;
- (8) Beginning after 1973 and prior to 1975, equals \$13,200 of remuneration;
- (9) Beginning after 1974 and prior to 1976, equals \$14,100 of remuneration;
- (10) Beginning after 1975 and prior to 1977, equals \$15,300 of remuneration; or
- (11) Beginning after 1976, and amount equal to the contribution and benefit base as determined under section 230 of the Social Security Act which is effective for such calendar year.

This subsection is an exception to the rule in paragraph (a) of this section concerning a presumption applicable to conversion of railroad compensation into quarters of coverage for years prior to 1975.

[42 FR 18273, Apr. 6, 1977, as amended at 65 FR 16814, Mar. 30, 2000]

§ 404.1412 Compensation quarters of coverage.

As used in this subpart, a compensation quarter of coverage is any quarter of coverage computed with respect to compensation paid to an individual for railroad employment after 1936 and

prior to 1975 in accordance with the provisions for determining such quarters of coverage as contained in section 5(l)(4) of the Railroad Retirement Act of 1937. (For years beginning 1975, see § 404.1410(b)).

[42 FR 18274, Apr. 6, 1977]

§ 404.1413 When will we certify payment to the Railroad Retirement Board (RRB)?

(a) *When we will certify payment to RRB.* If we find that you are entitled to any payment under title II of the Social Security Act, we will certify payment to the Railroad Retirement Board if you meet any of the following requirements:

- (1) You are a vested worker; or
- (2) You are the wife or husband of a vested worker; or
- (3) You are the survivor of a vested worker and you are entitled, or could upon application be entitled to, an annuity under section 2 of the Railroad Retirement Act of 1974, as amended, (45 U.S.C. 231(a)); or
- (4) You are entitled to benefits under section 202 of the Social Security Act on the basis of the wages and self-employment income of a vested worker (unless you are the survivor of a vested worker who did not have a current connection, as defined in section 1(o) of the Railroad Retirement Act of 1974, as amended, (45 U.S.C. 231(o)) with the railroad industry at the time of his or her death).

(b) *What information does certification include?* The certification we make to the Railroad Retirement Board for individuals entitled to any payment(s) under title II will include your name, address, payment amount(s), and the date the payment(s) should begin.

(c) *Applicability limitations.* The applicability limitations in paragraphs (a)(1) through (4) of this section affect claimants who first become entitled to benefits under title II of the Social Security Act after 1974. (See also § 404.1810.)

[69 FR 5693, Feb. 6, 2004]