

the lump sum is payable to the employee's survivors in the same order of priority as shown for the residual lump-sum (RLS) in § 234.44.

**§ 234.57 Effect of payment on other benefits.**

The tier II separation allowance lump-sum payment has no effect on the payment of other benefits.

**§ 234.58 Computation of the separation allowance lump-sum payment.**

The separation allowance lump-sum payment is calculated as follows:

(a) Determine the amount of the compensation due to the receipt of separation or severance pay that could not be considered in the computation of tier II;

(b) Multiply this amount by the rate or rates of tax imposed by section 3201(b) of the Internal Revenue Code of 1954 or 1986 on the compensation (tier II tax); and

(c) The product is the amount of the separation allowance lump-sum payment.

*Example* In January of 1988 an employee with 10 years of railroad service relinquished his seniority rights in order to receive a separation allowance of \$20,000, thereby severing his employment relation. This was the only creditable railroad compensation earned by the employee in 1988. Both the employer and employee would have paid their share of railroad retirement taxes on this amount. With respect to the employee tier II tax, the tax rate for 1988 was 4.9% under section 3201(b) of the Internal Revenue Code of 1986. Although the full \$20,000 was creditable under the Railroad Retirement Act for tier I benefit computation purposes, only one month's compensation, \$2,800, one-twelfth of the annual tier II earnings base of \$33,600 for 1988, was creditable for tier II benefit purposes. This is because section 3(i)(4) of the Railroad Retirement Act does not permit crediting of compensation for tier II computation purposes after the employment relation has been severed. Under the lump-sum provision discussed above, the employee in this example would, upon award of his employee annuity, receive a payment of \$842.80 (\$20,000 minus \$2,800, the amount of separation allowance that was creditable, or \$17,200 times 4.9%).

**Subpart G—Miscellaneous**

SOURCE: 51 FR 3036, Jan. 23, 1986. Redesignated at 56 FR 1573, Jan. 16, 1991.

**§ 234.60 Escheat.**

Any payment under this part which would be payable to any state, political subdivision of a state, the U.S. government or a foreign government because of the lack of a legal heir, shall remain in the Railroad Retirement Account.

**§ 234.61 Assignment of interest by an eligible person.**

(a) Any person who is eligible to receive a share of a lump-sum payment may assign his or her share to another eligible applicant, provided the share is not more than \$500.

(b) If an LSDP or accrued annuity is payable, the request that a share be assigned must be received at a Board office no later than two years after the death of the employee or the originally entitled person.

(Approved by the Office of Management and Budget under control number 3220-0031)

**§ 234.62 Effect of conviction of a felony on entitlement.**

A person who has been convicted of a felony or an act in the nature of a felony of intentionally causing the employee's death shall not be entitled to any benefits under the Railroad Retirement Act. If a charge of felony is pending against an applicant for a lump-sum payment, the Board will make no payment until the applicant submits proof that the charge has been withdrawn, that no further action will be taken on the charge, or that he or she has been cleared of the charge.

**PART 235—PAYMENT OF SOCIAL SECURITY BENEFITS BY THE RAILROAD RETIREMENT BOARD**

Sec.

235.1 Basis and purpose.

235.2 Other regulations related to this part.

235.3 Who is paid social security benefits by the Board.

235.4 How the Board pays social security benefits.

AUTHORITY: 45 U.S.C. 231f.

SOURCE: 54 FR 5225, Feb. 2, 1989, unless otherwise noted.

**§ 235.1 Basis and purpose.**

Effective January 1, 1975, the Railroad Retirement Act of 1974 (Act) requires the Railroad Retirement Board (Board) to provide for the payment of monthly social security benefit payments on behalf of the Social Security Administration to certain individuals as described in § 235.3 of this part. However, any such individual who was receiving benefits from the Social Security Administration prior to January 1, 1975, will continue to receive benefits from that agency unless he or she becomes eligible for a different type of social security benefit after that date and files a new application with the Social Security Administration for that benefit. Benefits under the new entitlement will be paid by the Board. The Act provides an offset in the railroad retirement benefits of individuals who are also eligible for social security benefits. Because the Board is required to make this offset, the payment of social security benefits by the Board is authorized for the purpose of convenience in the administration of the Act.

**§ 235.2 Other regulations related to this part.**

This part is related to a number of other parts in this chapter:

(a) Part 216 describes when a person is eligible for an annuity under the Railroad Retirement Act.

(b) Part 222 defines family relationships (for example, who is the wife or widow of an employee) for use when it is necessary to establish such a relationship in order to receive a benefit under the Railroad Retirement Act.

**§ 235.3 Who is paid social security benefits by the Board.**

The following individuals, if entitled to social security benefits, are paid such benefits by the Board:

(a) A railroad employee who has been credited with at least 120 months of railroad service;

(b) A wife or husband of a railroad employee who has been credited with at least 120 months of railroad service;

(c) A divorced wife or husband of a railroad employee who has been credited with at least 120 months of railroad service, but only if the divorced wife or husband is claiming social secu-

rity benefits based upon the railroad employee's social security wages;

(d) A survivor of a railroad employee, including a surviving divorced spouse, remarried widow(er), surviving divorced mother or father, who is entitled, or upon application would be entitled, to an annuity under the Railroad Retirement Act;

(e) Any other person entitled to benefits under title II of the Social Security Act based on the social security wages of a railroad employee who has been credited with at least 120 months of railroad service, except survivors of a railroad employee when the Social Security Administration has jurisdiction for survivor benefits. See part 221 of this title.

**§ 235.4 How the Board pays social security benefits.**

(a) When an individual described in § 235.3 of this part is determined by the Social Security Administration to be entitled to social security benefits, the Social Security Administration certifies such benefits to the Board for payment by the Board. Once social security entitlement is certified to the Board, the Board then certifies the amount of the social security benefit to the Department of the Treasury for payment and makes any necessary adjustments in the individual's railroad retirement benefit.

(b) The Board has no authority with respect to the adjudication of the benefit to be paid under the Social Security Act. Entitlement to and the computation of such benefits is a matter solely within the jurisdiction of the Social Security Administration.

**PARTS 236–238 [RESERVED]**

**PART 240 [RESERVED]**

**PART 243—TRANSFER, ASSIGNMENT, OR WAIVER OF PAYMENTS**

- Sec.
- 243.1 Prohibition against garnishment.
- 243.2 Legal process for the enforcement of child support and alimony obligations.
- 243.3 Payments pursuant to court decree or court-approved property settlement.
- 243.4 Taxation of benefits.