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SOCIAL SECURITY WAGE RECORDS

Three parties primarily are concerned with Social Security wage records—the employer, the employee, and the Social Security Board.¹

Wages are defined as “all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.”² Remuneration for services which do not constitute “employment” within the coverage of the Act is excluded from “wages.”³ Likewise, remuneration in excess of \$3,000 paid in any one year is exempt. Prior to the 1939 amendments the tax was assessed on the wages up to \$3,000 paid by each employer, even though the employee had more than one employer during the year. After the 1939 amendments, any amount in excess of \$3,000 paid in any calendar year to one employee, whether it was received from one or several employers, is exempt.

In the absence of evidence to the contrary or unless they were

²⁰⁰ The camp was located on land deeded by a city and was supported by county funds. S. S. T. 168, *id.* at 431.

²⁰¹ The league assists the cities with finance and personnel problems and serves as a fact finding body in connection with proposed legislation affecting the municipalities. S. S. T. 211, 1937-2 CUM. BULL. 440. Also a company owned jointly by a city and county operating ferries between cities in the State is within the exception. S. S. T. 74, 1937-1 CUM. BULL. 475.

²⁰² S. S. T. 89, *id.* at 476. Municipally owned *and* operated lighting plant, water works, and cemetery are within the exception. S. S. T. 2, XV-1 CUM. BULL. 473 (1936).

¹ While this although a system of account numbers and wage records was not required by the original Act, the Social Security Board immediately ordered such registration. The amended Act, 53 STAT. 1369 (1939), 42 U. S. C. A. §405 (Supp. 1940), makes it the specific duty of the Board to establish and maintain records of the amount of wages paid to each individual.

² 53 STAT. 1373 (1939), 42 U. S. C. A. § 409 (Supp. 1940).

³ For a discussion of the meaning of “employment” see p. 495 *supra*.

constructively paid in another period,⁴ wages are considered paid in the period in which the employer reports them paid, regardless of the period in which they were earned. Wages to be constructively paid: (1) must be set aside or credited to the account of the wage earner on the employer's books, (2) must not be subject to any substantial limitation or restriction as to the time, manner, or method of payment, and (3) must be available to the wage earner so that he can draw them at any time.⁵ However, the rate of tax is the rate applying at the time the wages were earned and not the rate at the time they were paid. The Act requires that wages which come within the definition must be paid to the individual. This has been interpreted to include wages earned by the employee prior to his death and paid to his estate during the quarter in which he died.⁶

The second exclusion includes payments made under a plan or system established by an employer for benefit of his employees generally or for a class of his employees.⁷ Such plan or system must include either retirement benefits; sick benefits; accident disability benefits; medical or hospitalization payments in connection with sickness or accident disability; or death benefits. Death benefits systems must not allow the wage earner an option to receive all or any part of the "death" payment or the premium or contributions thereto paid by the employer, the right of assignment, or the right to receive a cash payment upon withdrawal from or upon the termination of the plan.

Payment by the employer of the employee's tax imposed by the Act (without deducting such tax from the employee's remuneration) or of any tax ordinarily deductible from the employee's wages under a state unemployment compensation law is likewise exempt. Finally, an exclusion is made of dismissal payments which the employer is not legally required to make.⁸

Outside these named exclusions, nearly all remuneration received by employees has been classified as "wages." The policy seems to be to record in the individual employee's social security account as much of his remuneration as possible. However, all payments which are received by the employee for some reason other than a service rendered for the employer and the cost of conveniences, which are provided as a means of promoting the health, goodwill, contentment, or efficiency of the employee are excluded from "wages."⁹ Included in the former are tips or other gratuities paid directly to an employee

⁴ Soc. Sec. Bd., Claims Manual (1940) §1102. An employee who gets a judgment for back wages is credited with such wages only when the judgment is satisfied either in part or in full.

⁵ Soc. Sec. Bd., Claims Manual (1940) §1104.

⁶ Soc. Sec. Bd., Claims Manual (1940) §1103.

⁷ Before the 1939 amendments, the only exclusions were the payments by each employer in excess of \$3,000 in any one calendar year, 49 STAT. 625 (1936), 42 U. S. C. A. §409 (Supp. 1940).

⁸ Dismissal payments are not legally required unless some state statute or the contract with the employee require them.

⁹ U. S. Treas. Reg. 90, Art. 207.

by a customer of the employer.¹⁰ Actual reimbursement for traveling and other expenses are not subject to the tax, but amounts paid to employees for traveling expenses which exceed those actually paid out by the employees must be reported.¹¹

The Bureau of Internal Revenue has ruled that bus and street car transportation tickets given by the employer to the employee and not accounted for in any way (the employee being able to use them for personal trips) are not wages.¹² Amounts distributed to employees from a Christmas fund maintained by the employer but supported entirely by members of the fund do not constitute wages,¹³ but "Christmas gifts" from the employer to employees are included,¹⁴ as are other forms of extra compensation, such as stock bonuses.¹⁵

Free lunches are generally for the betterment of the employer's interest, *e.g.* so that employees will not have to go far from work at noon and so are included.¹⁶ From this ruling, it seems that amounts paid by a baseball club to cover transportation, room, and board of players while in training and while away from the home grounds should constitute "wages" but the Bureau of Internal Revenue decided otherwise.¹⁷ But, where full remuneration is paid to each employee whether or not he avails himself of the privilege of free lunches, the value of these meals need not be reported.¹⁸ Strike benefits,¹⁹ workmen's compensation benefits,²⁰ and reinstatement payments ordered by the National Labor Relations Board²¹ do not constitute wages. These payments are not made for any service to the employer, but rather in spite of a failure to serve. Likewise, advances to employees which employers are legally required to repay are not wages,²² but where an employee is advanced full pay while serving on a jury on condition that he reimburse the employer for the amount he received for jury service, the excess received from the employer is taxable.²³

The actual problem of maintaining wage records falls upon the three interested parties with varying degrees of severity. The wage earner has only his own wages to record, and then only if he chooses.²⁴

¹⁰ *Id.* 91, Art. 15 (c).

¹¹ *Id.* 90, Art. 209 (c).

¹² S. S. T. 248, 1938-1 CUM. BULL. 458.

¹³ S. S. T. 261, *id.* at 452.

¹⁴ S. S. T. 251, *id.* at 450.

¹⁵ Indianapolis Glove Co. v. U. S., 96 F. (2d) 816 (C. C. A. 7th, 1938).

¹⁶ S. S. T. 348, 1939-1 CUM. BULL. 304.

¹⁷ S. S. T. 383, 1940-1 CUM. BULL. 210.

¹⁸ S. S. T. 302, 1938-1 CUM. BULL. 456.

¹⁹ S. S. T. 247, *id.* at 449.

²⁰ S. S. T. 54, XV-2 CUM. BULL. 421 (1936).

²¹ S. S. T. 359, 1939-1 CUM. BULL. 305.

²² S. S. T. 379, 1939-2 CUM. BULL. 293.

²³ S. S. T. 389, 1940-1 CUM. BULL. 212.

²⁴ It is to be noted that it is decidedly advisable for employees to keep permanent and accurate records, including such information as the date of beginning and the date of termination of employ-

The employer however must at the time of each wage payment, furnish a written statement to each employee showing the amount of employee's tax deducted from his wage.²⁵ No form is prescribed for this statement, but it must be such that the employee can retain it in his possession,²⁶ and it must show, in addition to the tax deduction, the name of the employee, the period covered by the statement, and the total amount of wages paid within the period. Many employers have met this requirement by putting the information on a voucher attached to the employee's pay check in such a manner that he can tear it off and keep it for his record; similar information may be contained on a separate slip in the pay envelope or written on the outside of the envelope, when checks are not used.

Finally, the Social Security Board is required by law to inform the employee, upon his request, of the amounts of his wages and the periods of employment shown by its records at the time of the request.²⁷ In September, 1940, the Board informed employees that they could obtain statements of their wage credits by writing the Board. The Board anticipates that this will result in greater interest among wage earners in the current status and accuracy of their wage accounts.²⁸ It is expected that this will assist in correcting errors made in employers' reports.

The employer also must keep accurate records of all remuneration paid to his employees after December 31, 1936. No particular form is prescribed by the act, but a certain minimum of information is required. Along with the employee's name, address, and social security account number, the record of the employer must show the occupation, total amount and date of each remuneration payment and period covered thereby, the amount subject to tax, and the amount of employee's tax withheld. If the total remuneration and the amount subject to tax are not equal, the reason must be shown in the record. If adjustments of the employees' or employer's tax are made, accurate record of the details of such adjustments must be kept, including the date and amount of each.²⁹ These records must be kept for at least four years in a convenient and safe location and at all time accessible to internal revenue officers.³⁰

An important additional record the employer will maintain is a subsidiary ledger containing the individual's earning and compensa-

ment with an employer, the occupation, the periods worked, the details of taxable wages received and the taxes deducted from wages. U. S. Treas. Reg. 91, Art. 412 (b).

²⁵ 53 STAT. 1382 (1939), 26 U. S. C. A. §1403 (Supp. 1940).

²⁶ *Ibid.* This applies only to wages paid after Dec. 31, 1939. Under U. S. Treas. Reg. 91, Art. 206, a similar statement was required but it did not have to be for the employee's permanent possession—only in such form that the employee could retain it for a reasonable length of time in order that he might determine whether the employee's tax had been correctly computed.

²⁷ 53 STAT. 1369 (1939); 42 U. S. C. A. §405 (Supp. 1940).

²⁸ SOC. SEC. BULL. No. 9 at 77 (1940).

²⁹ U. S. Treas. Reg. 91, Art. 412 (a).

³⁰ *Id.* Art. 412 (c).

tion record. This consists, in most cases, of a file of cards or book of loose-leaf pages, one card or page for each employee, containing the required information. Where bookkeeping machines are used, this record can be obtained as a carbon by-product of the checkwriting process, the "stub" of the check also serving as the statement the employer is required to give the employee. The amount of tax deduction shown on this record must be handled as a special fund held in trust for the Treasury of the United States; therefore a separate liability account should be opened in the general ledger of the employer to show the balance due the Federal government at all times. However, failure to set aside this fund will not give the government a trust or lien attaching to the entire assets of a bankrupt employer who has not remitted the tax withheld, prior to bankruptcy. The government's claim in that case is entitled only to the priority given taxes by the Bankruptcy Act.³¹

At the end of each calendar quarter and before the end of the first month of the new quarter, the employer must report the total employees' taxable wages paid within the quarter on a summary information return (form SS-1a), submitting at the same time a report of taxable wages paid to each employee (form SS-2a). Form SS-1a also serves as a tax information return and the tax payment should accompany the return to avoid an interest charge.

The final wage record is maintained by the Wage Records Division of the Social Security Board. From the individual employee's taxable wages report (form SS-2a) this division posts the information on the individual's account. The amended Social Security Act provides that such records shall be evidence for the purpose of proceedings before the Board or any court of the amounts of such wages and the periods in which they were paid.³² Photostatic copies of the Board's wage records are sent out to the field offices when claims are reviewed.³³

Where an employer deducts the tax from the employee's wages, but fails to remit the tax as well as report the employee's wages, an audit of the employer's books may disclose the delinquency and result in an assessment and correction of the records. If this fails, or if the employee discovers, in the meantime, that certain payments have not been reported, the employee may present his complaint to the nearest field office. At the hearing, the statement of tax deductions given to each employee at the time of each remuneration payment is effective proof of the amount paid. Inasmuch as most employees will have destroyed these statements, the Board is authorized to accept other evidence which it considers competent, including evidence not admissible under rules applicable to court procedure.³⁴ If the Board is unable to collect the tax withheld by the employer because the employer is beyond the reach of the federal government at the

³¹ *In re Frank*, 25 F. Supp. 1005 (S. D. N. Y. 1939).

³² 53 STAT. 1369 (1939), 42 U. S. C. A. §405 (Supp. 1940).

³³ ATT'Y. GEN. COMMITTEE ON ADMINISTRATIVE PROCEDURE, SOCIAL SECURITY BOARD (Monograph No. 16, 1940) 10.

³⁴ (1939) 6 U. S. L. WEEK 544.

time the delinquency is established, the individual's wage record with the Social Security Board will be corrected without prejudice to the employee and the Federal Old-Age and Survivors Insurance Trust Fund will stand the loss of the unpaid tax.

Another problem frequently arises when the employer's report does not completely identify the wage earner.³⁵ The field offices of the Board first attempt to trace these items by contacting the employers who reported them. Unlocated amounts are recorded under the employers' names in a suspense ledger maintained by the Board. If in the future the employee claims an amount from an employer this claim may be located in the suspense ledger, so that the applicant will receive the benefits on the basis of wages earned, although they were not credited to his individual account originally.

Strict limitation is placed on the privilege of challenging the accuracy of the wage records of the Board. The amended Act provides that an individual may request a hearing to prove such error up to the end of the fourth calendar year after the wages were paid or were alleged to have been paid. After that four year period, the records of the Board are conclusive; but the Board may, on its own initiative, at any time revise such records to conform to tax returns filed with the Commissioner of Internal Revenue.³⁸ Thus, even after the four year period has passed, if it is disclosed that an employer failed to pay over an employee's tax and an additional assessment is made against the employer, the amount of previously unreported wages can be recorded on the individual's wages earned record if the Board chooses.

J. Lloyd Fitzpatrick

PROOF OF BENEFICIAL INTEREST

The insured worker, his wife, children, or parents may be entitled to Old-Age and Survivor's Insurance benefits. Thus the problems of age, dependency, common law marriages, illegitimacy, and adoption merit discussion. Proof of age is discussed in the light of the general rules of evidence. Dependency in this situation is primarily a statutory matter. Status or the right to inherit is governed by the law of the state of the insured worker's domicile.

PROOF OF AGE

One of the eligibility qualifications for primary old-age insurance benefits is that the claimant attain the age of sixty-five.¹ The same age requirement is found in other provisions for benefits.²

³⁵ ATT'Y. GEN. COMMITTEE ON ADMINISTRATIVE PROCEDURE, SOCIAL SECURITY BOARD (Monograph No. 16, 1940) 7.

³⁶ 53 STAT. 1369 (1939), 42 U. S. C. A. §405 (Supp. 1940).

¹ SOCIAL SECURITY ACT (1939 Amendment) §202(a), 53 STAT. 1363 (1939), 42 U.S.C.A. §402 (Supp. 1940).

² Wife's Insurance Benefits, §202(b), *id.* at 1364, 42 U.S.C.A. §402(b) (Supp. 1940); Parents Insurance Benefits, §202(f), *id.* at 1366, 42 U.S.C.A. §402(f) (Supp. 1940); Widow's Insurance Benefits, §202(d), *id.* at 1365, 42 U.S.C.A. §402(d) (Supp. 1940).