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TREATMENT OF CERTAIN NONRESIDENT ALIENS UNDER THE RAILROAD RETIREMENT TAX ACT, ETC.

OCTOBER 9, 1968.—Ordered to be printed

Mr. LONG of Louisiana, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 7567]

The Committee on Finance, to which was referred the bill (H.R. 7567) to amend the Internal Revenue Code of 1954 with respect to the definition of compensation for purposes of tax under the Railroad Retirement Tax Act, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. SUMMARY

H.R. 7567 amends the railroad employment provisions of present law (the Railroad Retirement Tax Act, the Railroad Retirement Act of 1937, and the Railroad Unemployment Insurance Act), in general, to exclude from the scope of those acts services performed by a nonresident alien individual who is temporarily in the United States as a participant in a cultural exchange or training program. The exclusion is applicable only to nonresident alien individuals who are in the United States in a nonimmigrant status under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act. Moreover, it is applicable only with regard to services which are necessary to carry out the purpose of the alien's visit to the United States.

The general employment provisions of present law (the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and the Social Security Act) already exclude the services performed by these nonresident alien individuals from their scope.

The Treasury Department has indicated that it does not object to the enactment of this bill.

II. GENERAL STATEMENT

Reasons for bill.—Under present law, compensation for services performed by nonresident alien individuals who are temporarily present in the United States in a nonimmigrant status as participants in certain cultural exchange or training programs generally is excluded from tax under the Federal Insurance Contributions Act (imposed by secs. 3101 and 3111 of the code) and under the Federal Unemployment Tax Act (imposed by sec. 3301 of the code). This exclusion applies only to services performed for the period the individual is a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act. Moreover, the exemption applies only to remuneration for services which are necessary to carry out the purpose for which the alien is in the United States; namely, as a participant in the cultural exchange or training program. A similar exclusion in the Social Security Act provides that these services are not counted for purposes of determining benefits allowable under that act.

Subparagraph (F) of section 101(a)(15) of the Immigration and Nationality Act concerns bona fide students who are qualified to pursue a full course of study and who come to the United States temporarily and solely for the purpose of pursuing a course of study. The study must be at an established educational institution which has been particularly designated by the student and approved by the Attorney General after consultation with the Office of Education of the United States. Subparagraph (J) of that section concerns bona fide students, scholars, trainees, teachers, specialists, and similar persons who temporarily come to the United States as participants in programs designated by the Secretary of State, for the purpose of teaching, studying, consulting, receiving training, et cetra.

The provisions of present law excluding services performed by nonresident alien individuals, who are temporarily present in the United States in a nonimmigrant status as participants in certain cultural exchange or training programs, from the taxes imposed by the Federal Insurance Contributions Act and the Federal Unemployment Tax Act and the benefits provided under the Social Security Act were adopted in the Mutual Educational and Cultural Exchange Act of 1961. This was done because these alien individuals are in the United States for such a short period of time that they have little expectation of realizing any social security or unemployment benefits. In addition, the exclusion of these individuals was considered to contribute to the objectives of the exchange program.

The Mutual Educational and Cultural Act of 1961 did not include, however, a similar exclusion for services covered by the provisions of law relating to railroad employment (the Railroad Retirement Tax Act, the Railroad Retirement Act of 1937, and the Railroad Unemployment Insurance Act). Presumably, this was done on the basis that it was not felt these alien individuals would be rendering services which were subject to the railroad employment provisions.

The committee understands however, that there are situations where services performed by these alien individuals are subject to the railroad employment provisions. For example, the services of a doctor who participates in an exchange or training program and who pursuant to that program is employed in a hospital owned by a railroad would be

subject to those provisions. The committee agrees with the House that the reasons underlying the exclusion of services performed by these alien individuals from the scope of the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and the Social Security Act are equally applicable in the case of the railroad employment provisions. The very nature of the purpose for which the alien is present in the United States indicates that the alien's stay in the United States will be of short duration. Thus, the alien will have little expectation of realizing any benefits under the railroad employment provisions. Accordingly, the bill excludes services performed by these individuals from those provisions.

Explanation of bill.—The bill provides that the term "compensation" for purposes of the railroad retirement tax (which is defined in sec. 3231(e)(1) of the code) is not to include remuneration for services performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act. This exclusion is to apply, however, only to remuneration for services performed to carry out the purpose of the alien's visit to the United States; namely, as a participant in the cultural exchange or training program. The exclusion, moreover, is only to apply for the period the alien is present in the United States as a nonimmigrant under subparagraph (F) or (J). Thus, if the alien terminates or loses the specified nonimmigrant status, the exclusion is not to be applicable for the period commencing at the termination or loss of that status.

The bill also amends the Railroad Retirement Act of 1937 (sec. 1(h)(1)) and the Railroad Unemployment Insurance Act (sec. 1(i)) in an identical manner. Thus, the specified services of these nonresident alien individuals are to be excluded from the scope of those acts.

The amendments of the Internal Revenue Code and the Railroad Retirement Act of 1937 made by the bill are to apply with respect to service performed after December 31, 1961, which is the effective date of the similar provisions in the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and the Social Security Act. The amendment made by the bill to the Railroad Unemployment Insurance Act is to apply with respect to service performed after December 31, 1967.

The bill also contains a special provision which allows a claim for credit or refund of the railroad retirement tax, which may have been paid by an employee, an employee representative, or an employer, with respect to service which is to be excluded from the scope of that tax under the bill, to be filed within 1 year after the bill is enacted, notwithstanding the fact that the period for filing the claim for credit or refund has expired before, or expires on or within 6 months after the date of enactment of the bill.

Any credit or refund of the railroad retirement tax which has been paid by an employee or an employee representative (under secs. 3201 and 3211 of the code) and which is attributable to the amendment made by the bill to the Railroad Retirement Tax Act is to be appropriately adjusted for any lump-sum payment which has been made under the Railroad Retirement Act of 1937 (sec. 5(f)(2)). Under the Railroad Retirement Act of 1937 (sec. 5(f)(2)) the beneficiaries of an

employee, who was not entitled to benefits under that act, receive a lump-sum payment upon his death which in effect is a return of the railroad retirement taxes paid by the employee. Where such a lump-sum payment has been made and the deceased employee's representative then files a claim for a credit or refund of the railroad retirement tax, which is attributable to the exclusion of the employee's service from the scope of the tax pursuant to the amendment made by the bill, an adjustment is necessary to prevent a double recovery. No adjustment is to be made, however, with respect to a credit or refund of an overpayment of the railroad retirement tax by an employer.

III. CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Section 3231(e) of the Internal Revenue Code of 1954

Sec. 3231. Definitions

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(e) COMPENSATION.—For purposes of this chapter—

(1) The term "compensation" means any form of money remuneration earned by an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. Such term does not include tips (except as is provided under paragraph (3)), or the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 3201. *Such term does not include remuneration for service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) of (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be.* Compensation which is earned during the period for which the Secretary or his delegate shall require a return of taxes under this chapter to be made and which is payable during the calendar month following such period shall be deemed to have been paid during such period only. For the purpose of determining the amount of taxes under sections 3201 and 3221, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $3 Compensation for service as a delegate to a national or international convention of the railway labor organization defined as an "employer" in subsection (a) of this section shall be disregarded for purposes of determining the amount of taxes due pursuant to this chapter if the individual rendering such service has not previously rendered service, other than as such a

delegate, which may be included in his "years of service" for purposes of the Railroad Retirement Act.

(2) A payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost.

(3) Solely for purposes of the tax imposed by section 3201 and other provisions of this chapter insofar as they relate to such tax, the term "compensation" also includes cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is less than $20.

Section 1(h)(1) of the Railroad Retirement Act of 1937

DEFINITIONS

SECTION 1. For the purpose of this Act—

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(h)(1) The term "compensation" means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. Such term does not include tips (except as is provided under paragraph (2)), or the voluntary payment by an employer, without deduction from the remuneration of the employee, of any tax now or hereafter imposed with respect to the compensation of such employee. *Such term does not include remuneration for service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be.* For the purposes of determining monthly compensation and years of service and for the purposes of section 2 and 5 of this Act, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $3 and (i) such compensation is earned between December 31, 1936, and April 1, 1940, and taxes

thereon pursuant to sections 2(a) and 3(a) of the Carriers Taxing Act of 1937 or sections 1500 and 1520 of the Internal Revenue Code are not paid prior to July 1, 1940; or (ii) such compensation is earned after March 31, 1940. A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. Compensation earned in any calendar month before 1947 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or, if the employee establishes, subject to the provisions of section 8, the period during which such compensation will have been earned. In determining the monthly compensation, the average monthly remuneration, and quarters of coverage of any employee, there shall be attributable as compensation paid to him in each calendar month before 1968 in which he is in military service creditable under section 4 the amount of $160 in addition to the compensation, if any, paid to him with respect to such month. In making such a determination there shall be attributable as compensation paid to him for each calendar month after 1967 in which he is in military service so creditable the amount of $260. Compensation for service as a delegate to a national or international convention of a railway labor organization defined as an "employer" in subsection (a) of this section shall be disregarded for purposes of determining eligibility for and the amount of benefits pursuant to this Act if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service."

(2) Solely for purposes of determining amounts to be included in the compensation of an individual who is an employee (as defined in subsection (b)) the term "compensation" shall (subject to section 3(c)) also include cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is less than $20.

(3) Tips included as compensation by reason of the provisions of paragraph (2) shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code of 1954 or (if no state-

ment including such tips is so furnished) at the time received; and tips so deemed to be paid in any month shall be deemed paid for services rendered in such month.

Section 1(i) of the Railroad Unemployment Insurance Act

DEFINITIONS

SECTION 1. For the purposes of this Act, except when used in amending the provisions of other Acts—

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(i) The term "compensation" means any form of money remuneration, including pay for time lost but excluding tips, paid for services rendered as an employee to one or more employers, or as an employee representative: *Provided, however,* That in computing the compensation paid to any employee, no part of any month's compensation in excess of $300 for any month before July 1, 1954, or in excess of $350 for any month after June 30, 1954, and before the calendar month next following the month in which this Act was amended in 1959, or in excess of $400 for any month after the month in which this Act was so amended, shall be recognized. *Such term does not include remuneration for service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be.* A payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. Compensation earned in any calendar month before 1947 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or, if the employee establishes, subject to the provisions of section 6 of this Act, the period during which such compensation will have been earned.

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