

RAILROAD RETIREMENT AND SURVIVORS' IMPROVEMENT
 ACT OF 2000

JULY 26, 2000.—Committed to the Committee of the Whole House on the State of
 the Union and ordered to be printed

Mr. ARCHER, from the Committee on Ways and Means,
 submitted the following

R E P O R T

[To accompany H.R. 4844]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 4844) to modernize the financing of the railroad retirement system and to provide enhanced benefits to employees and beneficiaries, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Railroad Retirement and Survivors’ Improvement Act of 2000”.

(b) **TABLE OF CONTENTS.**—

Sec. 1. Short title; table of contents.

TITLE I—AMENDMENTS TO RAILROAD RETIREMENT ACT OF 1974

Sec. 101. Expansion of widow’s and widower’s benefits.
 Sec. 102. Retirement age restoration.
 Sec. 103. Vesting requirement.
 Sec. 104. Repeal of railroad retirement maximum.
 Sec. 105. Investment of railroad retirement assets.
 Sec. 106. Elimination of supplemental annuity account.
 Sec. 107. Transfer authority revisions.
 Sec. 108. Annual ratio projections and certifications by the Railroad Retirement Board.

TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986

Sec. 201. Amendments to the Internal Revenue Code of 1986.
 Sec. 202. Exemption from tax for Railroad Retirement Investment Trust.
 Sec. 203. Repeal of supplemental annuity tax.
 Sec. 204. Employer, employee representative, and employee tier 2 tax rate adjustments.

TITLE III—REPEAL OF 4.3-CENT MOTOR FUEL EXCISE TAXES ON RAILROADS AND INLAND WATERWAY TRANSPORTATION WHICH REMAIN IN GENERAL FUND

Sec. 301. Repeal of 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in general fund.

TITLE I—AMENDMENTS TO RAILROAD RETIREMENT ACT OF 1974

SEC. 101. EXPANSION OF WIDOW’S AND WIDOWER’S BENEFITS.

(a) **IN GENERAL.**—Section 4(g) of the Railroad Retirement Act of 1974 is amended by adding at the end the following new subdivision:

“(10)(i) If for any month the unreduced annuity provided under this section for a widow or widower is less than the widow’s or widower’s initial minimum amount computed pursuant to paragraph (ii) of this subdivision, the unreduced annuity shall be increased to that initial minimum amount. For the purposes of this subdivision, the unreduced annuity is the annuity without regard to any deduction on account of work, without regard to any reduction for entitlement to an annuity under section 2(a)(1) of this Act, without regard to any reduction for entitlement to a benefit under title II of the Social Security Act, and without regard to any reduction for entitlement to a public service pension pursuant to sections 202(e)(7), 202(f)(2), or section 202(g)(4) of the Social Security Act.

“(ii) For the purposes of this subdivision, the widow or widower’s initial minimum amount is the amount of the unreduced annuity computed at the time an annuity is awarded to that widow or widower, except that—

“(A) in subsection (g)(1)(i) ‘100 per centum’ shall be substituted for ‘50 per centum’; and

“(B) in subsection (g)(2)(ii) ‘130 per centum’ shall be substituted for ‘80 per centum’ both places it appears.

“(iii) If a widow or widower who was previously entitled to a widow’s or widower’s annuity under section 2(d)(1)(ii) of this Act becomes entitled to a widow’s or widower’s annuity under section 2(d)(1)(i) of this Act, a new initial minimum amount shall be computed at the time of award of the widow’s or widower’s annuity under section 2(d)(1)(i) of this Act.”.

(b) **EFFECTIVE DATE.**—

(1) **GENERALLY.**—The amendment made by this section shall take effect January 1, 2001 and shall apply to annuity amounts accruing for months after December 2000 in the case of annuities awarded on or after that date and in the

case of annuities awarded before that date if the annuity amount under section 4(g) of the Railroad Retirement Act was computed under section 4(g), as amended by Public Law 97-35.

(2) SPECIAL RULE FOR ANNUITIES AWARDED BEFORE JANUARY 1, 2001.—In applying the amendments made by this section to annuities awarded before January 1, 2001, the calculation of the initial minimum amount under new section 4(g)(10)(ii) of the Act shall be made as of the date of award of the widow's or widower's annuity.

SEC. 102. RETIREMENT AGE RESTORATION.

(a) EMPLOYEE ANNUITIES.—Section 3(a)(2) of the Railroad Retirement Act of 1974 is amended by inserting after “(2)” the following: “For purposes of this subsection, individuals entitled to an annuity under section 2(a)(1)(ii) of this Act shall, except for the purposes of recomputations in accordance with section 215(f) of the Social Security Act, be deemed to have attained retirement age (as defined by section 216(l) of the Social Security Act).”

(b) SPOUSE AND SURVIVOR ANNUITIES.—Section 4(a)(2) of the Railroad Retirement Act of 1974 is amended by striking “if an” and all that follows through “section 2(c)(1) of this Act” and inserting “a spouse entitled to an annuity under section 2(c)(1)(ii)(B) of this Act”.

(c) CONFORMING REPEALS.—Sections 3(a)(3), 4(a)(3), and 4(a)(4) of the Railroad Retirement Act are repealed.

(d) EFFECTIVE DATES.—

(1) GENERALLY.—Except as provided in paragraph (2), the amendments made by this section shall apply to annuities that begin to accrue on or after January 1, 2001.

(2) EXCEPTION.—The amount of the annuity provided for a spouse under section 4(a) shall be computed under section 4(a)(3), as in effect before the date of the enactment of this section, if the annuity amount provided under section 3(a) for the individual on whose employment record the spouse annuity is based was computed under section 3(a)(3), as in effect before the date of the enactment of this section.

SEC. 103. VESTING REQUIREMENT.

(a) CERTAIN ANNUITIES FOR INDIVIDUALS.—Section 2(a) of the Railroad Retirement Act of 1974 is amended—

(1) by inserting in subdivision (1) “or, for purposes of paragraphs (i), (iii), and (v), five years of service, all of which accrues after December 31, 1995” after “ten years of service”, and

(2) by adding at the end the following:

“(4) An individual who is entitled to an annuity under paragraph (v) of subdivision (1), but who does not have at least ten years of service, shall, prior to the month in which the individual attains age 62, be entitled only to an annuity amount computed under section 3(a) of this Act (without regard to section 3(a)(2) of this Act) or section 3(f)(3) of this Act. Upon attainment of age 62, such an individual may also be entitled to an annuity amount computed under section 3(b), but such annuity amount shall be reduced for early retirement in the same manner as if the individual were entitled to an annuity under section 2(a)(1)(iii).”

(b) COMPUTATION RULE FOR INDIVIDUALS' ANNUITIES.—Section 3(a) of the Railroad Retirement Act of 1974, as amended by section 102 of this Act, is further amended by adding at the end the following new subdivision:

“(3) If an individual entitled to an annuity under section 2(a)(1)(i) or (iii) of this Act on the basis of less than ten years of service is entitled to a benefit under section 202(a), section 202(b), or section 202(c) of the Social Security Act which began to accrue before the annuity under section 2(a)(1)(i) or (iii) of this Act, the annuity amount provided such individual under this subsection, shall be computed as though the annuity under this Act began to accrue on the later of (A) the date on which the benefit under section 202(a), section 202(b), or section 202(c) of the Social Security Act began or (B) the date on which the individual first met the conditions for entitlement to an age reduced annuity under this Act other than the conditions set forth in sections 2(e)(1) and 2(e)(2) of this Act and the requirement that an application be filed.”

(c) SURVIVORS' ANNUITIES.—Section 2(d)(1) of the Railroad Retirement Act of 1974 is amended by inserting “or five years of service, all of which accrues after December 31, 1995” after “ten years of service”.

(d) LIMITATION ON ANNUITY AMOUNTS.—Section 2 of the Railroad Retirement Act of 1974 is amended by adding at the end the following:

“(i) An individual entitled to an annuity under this section who has completed five years of service, all of which accrues after 1995, but who has not completed ten years of service, and the spouse, divorced spouse, and survivors of such individual,

shall not be entitled to an annuity amount provided under section 3(a), section 4(a), or section 4(f) of this Act unless the individual, or the individual's spouse, divorced spouse, or survivors, would be entitled to a benefit under the Social Security Act on the basis of the individual's employment record under both the Railroad Retirement Act and the Social Security Act."

(e) COMPUTATION RULE FOR SPOUSES' ANNUITIES.—Section 4(a) of the Railroad Retirement Act of 1974, as amended by section 102 of this Act, is further amended by adding at the end the following new subdivision:

"(3) If a spouse entitled to an annuity under section 2(c)(1)(ii)(A), section 2(c)(1)(ii)(C), or section 2(c)(2) of this Act or a divorced spouse entitled to an annuity under section 2(c)(4) of this Act on the basis of the employment record of an employee who will have completed less than 10 years of service is entitled to a benefit under section 202(a), section 202(b), or section 202(c) of the Social Security Act which began to accrue before the annuity under section 2(c)(1)(ii)(A), section 2(c)(1)(ii)(C), section 2(c)(2), or section 2(c)(4) of this Act, the annuity amount provided under this subsection shall be computed as though the annuity under this Act began to accrue on the later of (A) the date on which the benefit under section 202(a), section 202(b), or section 202(c) of the Social Security Act began or (B) the first date on which the annuitant met the conditions for entitlement to an age reduced annuity under this Act other than the conditions set forth in sections 2(e)(1) and 2(e)(2) of this Act and the requirement that an application be filed."

(f) APPLICATION DEEMING PROVISION.—Section 5(b) of the Railroad Retirement Act of 1974 is amended by striking the second sentence and inserting the following: "An application filed with the Board for an employee annuity, spouse annuity, or divorced spouse annuity on the basis of the employment record of an employee who will have completed less than ten years of service shall be deemed to be an application for any benefit to which such applicant may be entitled under this Act or section 202(a), section 202(b), or section 202(c) of the Social Security Act. An application filed with the Board for an annuity on the basis of the employment record of an employee who will have completed ten years of service shall, unless the applicant specified otherwise, be deemed to be an application for any benefit to which such applicant may be entitled under this Act or title II of the Social Security Act."

(g) CREDITING SERVICE UNDER THE SOCIAL SECURITY ACT.—Section 18(2) of the Railroad Retirement Act of 1974 is amended—

(1) by inserting "or less than five years of service, all of which accrues after December 31, 1995" after "ten years of service" every place it occurs; and

(2) by inserting "or five or more years of service, all of which accrues after December 31, 1995" after "ten or more years of service".

(h) AUTOMATIC BENEFIT ELIGIBILITY ADJUSTMENTS.—Section 19 of Railroad Retirement Act of 1974 is amended—

(1) by inserting "or five or more years of service, all of which accrues after December 31, 1995" after "ten years of service" in subsection (c); and

(2) by inserting "or five or more years of service, all of which accrues after December 31, 1995" after "ten years of service" in subsection (d)(2).

(i) CONFORMING AMENDMENTS.—

(1) Section 6(e)(1) of the Railroad Retirement Act of 1974 is amended by inserting "or five or more years of service, all of which accrues after December 31, 1995" after "ten years of service".

(2) Section 7(b)(2) of the Railroad Retirement Act of 1974 is amended by inserting "or five or more years of service, all of which accrues after December 31, 1995" after "ten years of service".

(3) Section 205(i) of the Social Security Act is amended by inserting "or five or more years of service, all of which accrues after December 31, 1995" after "ten years of service".

(j) EFFECTIVE DATE.—The amendments made by this section shall take effect January 1, 2001.

SEC. 104. REPEAL OF RAILROAD RETIREMENT MAXIMUM.

(a) EMPLOYEE ANNUITIES.—Section 3(f) of the Railroad Retirement Act of 1974 is amended by striking paragraph (1).

(b) SPOUSE AND SURVIVOR ANNUITIES.—Section 4 of the Railroad Retirement Act of 1974 is amended by striking subsection (c).

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective January 1, 2001, and shall apply to annuity amounts accruing for months after December 2000.

SEC. 105. INVESTMENT OF RAILROAD RETIREMENT ASSETS.

(a) ESTABLISHMENT OF RAILROAD RETIREMENT INVESTMENT TRUST.—Section 15 of the Railroad Retirement Act of 1974 is amended by inserting after subsection (i) the following:

“(j) RAILROAD RETIREMENT INVESTMENT TRUST.—

“(1) ESTABLISHMENT.—The Railroad Retirement Investment Trust (hereinafter in this subsection referred to as the ‘Trust’) is hereby established. The Trust shall manage and invest the assets of the Railroad Retirement Trust Fund (hereinafter in this section referred to as the ‘Fund’, which is hereby established as a trust organized in the District of Columbia and shall, to the extent not inconsistent with this Act, be subject to the laws of the District of Columbia applicable to such trusts.

“(2) NOT A FEDERAL AGENCY OR INSTRUMENTALITY.—The Trust is not a department, agency, or instrumentality of the Government of the United States and shall not be subject to title 31, United States Code.

“(3) BOARD OF TRUSTEES.—

“(A) GENERALLY.—The Trust shall have a Board of Trustees, consisting of 7 members, each appointed by a unanimous vote of the Railroad Retirement Board. The Railroad Retirement Board may remove any member so appointed by unanimous vote. Of the 7 members, 3 shall represent the interests of labor, 3 shall represent the interests of management, and 1 shall represent the interests of the general public. The members of the Board of Trustees shall not be considered officers or employees of the Government of the United States.

“(B) QUALIFICATIONS.—Members of the Board of Trustees shall be appointed only from among persons who have experience and expertise in the management of financial investments and pension plans. No member of the Railroad Retirement Board shall be eligible to be a member of the Board of Trustees.

“(C) TERMS.—Except as provided in this subparagraph, each member shall be appointed for a 3-year term. The initial members appointed under this paragraph shall be divided into 3 equal groups so nearly as may be, of which one group will be appointed for a 1-year term, one for a 2-year term, and one for a 3-year term. A vacancy in the Board of Trustees shall not affect the powers of the Board of Trustees and shall be filled in the same manner as the selection of the member whose departure caused the vacancy. Upon the expiration of a term of a member of the Board of Trustees, that member shall continue to serve until a successor is appointed.

“(4) POWERS OF THE BOARD OF TRUSTEES.—The Board of Trustees shall—

“(A) retain independent advisers to assist it in the formulation and adoption of its investment guidelines;

“(B) retain independent investment managers to invest the assets of the Fund in a manner consistent with such investment guidelines;

“(C) invest assets in the Fund, pursuant to the policies adopted in subparagraph (A);

“(D) pay administrative expenses of the Fund and the Trust from the money in the Fund; and

“(E) transfer money to the disbursing agent to pay benefits payable under this Act from money in the Fund and administrative expenses related to those benefits.

“(5) REPORTING REQUIREMENTS AND FIDUCIARY STANDARDS.—The following reporting requirements and fiduciary standards shall apply with respect to the Railroad Retirement Trust and the Railroad Retirement Trust Fund (and the assets held in such Trust Fund):

“(A) DUTIES OF THE BOARD OF TRUSTEES.—The Railroad Retirement Trust and each member of the Board of Trustees shall discharge their duties with respect to the assets of the Fund solely in the interest of the Railroad Retirement Board and through it, the participants and beneficiaries of the programs funded under this Act—

“(i) for the exclusive purpose of—

“(I) providing benefits to participants and their beneficiaries; and

“(II) defraying reasonable expenses of administering the functions of the Trust;

“(ii) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

“(iii) by diversifying investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

“(iv) in accordance with Trust governing documents and instruments insofar as such documents and instruments are consistent with this Act.

“(B) PROHIBITIONS WITH RESPECT TO MEMBERS OF THE BOARD OF TRUSTEES.—No member of the Board of Trustees shall—

“(i) deal with the assets of the Fund in the trustee’s own interest or for the trustee’s own account;

“(ii) in an individual or in any other capacity act in any transaction involving the assets of the Fund on behalf of a party (or represent a party) whose interests are adverse to the interests of the Trust, the Fund, the Railroad Retirement Board, or the interests of participants or beneficiaries; or

“(iii) receive any consideration for the trustee’s own personal account from any party dealing with the assets of the Fund.

“(C) EXCULPATORY PROVISIONS AND INSURANCE.—Any provision in an agreement or instrument that purports to relieve a trustee from responsibility or liability for any responsibility, obligation or duty under this Act shall be void: *Provided, however*, That nothing shall preclude—

“(i) the Trust from purchasing insurance for its trustees or for itself to cover liability or losses occurring by reason of the act or omission of a trustee, if such insurance permits recourse by the insurer against the trustee in the case of a breach of a fiduciary obligation by such trustee;

“(ii) a trustee from purchasing insurance to cover liability under this section from and for his own account; or

“(iii) an employer or an employee organization from purchasing insurance to cover potential liability of one or more trustees with respect to their fiduciary responsibilities, obligations, and duties under this section.

“(D) BONDING.—Every trustee and every person who handles funds or other property of the Fund (hereafter in this subsection referred to as ‘Trust official’) shall be bonded. Such bonds shall provide protection to the Fund against loss by reason of acts of fraud or dishonesty on the part of any Trust official, directly or through the connivance of others, and shall be in accordance with the following:

“(i) The amount of such bond shall be fixed at the beginning of each fiscal year of the Trust by the Railroad Retirement Board. Such amount shall not be less than 10 percent of the amount of the funds handled. In no case shall such bond be less than \$1,000 nor more than \$500,000, except that the Railroad Retirement Board, after consideration of the record, may prescribe an amount in excess of \$500,000, subject to the 10 per centum limitation of the preceding sentence.

“(ii) It shall be unlawful for any Trust official to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of the Fund without being bonded as required by this subsection and it shall be unlawful for any Trust official, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any Trust official, with respect to whom the requirements this subsection have not been met.

“(iii) It shall be unlawful for any person to procure any bond required by this subsection from any surety or other company or through any agent or broker in whose business operations such person has any control or significant financial interest, direct or indirect.

“(E) AUDIT AND REPORT.—

“(i) The Trust shall annually engage an independent qualified public accountant to audit the financial statements of the Fund.

“(ii) The Trust shall submit an annual management report to the Congress not later than 180 days after the end of the Trust’s fiscal year. A management report under this subsection shall include—

“(I) a statement of financial position;

“(II) a statement of operations;

“(III) a statement of cash flows;

“(IV) a statement on internal accounting and administrative control systems;

“(V) the report resulting from an audit of the financial statements of the Trust conducted under subparagraph (E)(i); and

“(VI) any other comments and information necessary to inform the Congress about the operations and financial condition of the Trust and the Fund.

“(iii) The Trust shall provide the President, the Railroad Retirement Board, and the Director of the Office of Management and Budget a copy of the management report when it is submitted to Congress.

“(F) ENFORCEMENT.—The Railroad Retirement Board may bring a civil action—

“(i) to enjoin any act or practice by the Railroad Retirement Investment Trust, its Board of Trustees or its employees or agents that violates any provision of this Act; or

“(ii) to obtain other appropriate relief to redress such violations, or to enforce any provisions of this Act.

“(6) RULES AND ADMINISTRATIVE POWERS.—The Board of Trustees shall have the authority to make rules to govern its operations, employ professional staff, and contract with outside advisers to provide legal, accounting, investment advisory or other services necessary for the proper administration of this subsection. In the case of contracts with investment advisory services, compensation for such services may be on a fixed contract fee basis or on such other terms and conditions as are customary for such services.

“(7) QUORUM.—Five members of the Board of Trustees constitute a quorum to do business. Investment guidelines must be adopted by a unanimous vote of the entire Board of Trustees. All other decisions of the Board of Trustees shall be decided by a majority vote of the quorum present. All decisions of the Board of Trustees shall be entered upon the records of the Board of Trustees.”

(b) CONFORMING AND TECHNICAL AMENDMENTS GOVERNING INVESTMENTS.—Subsection 15(e) of the Railroad Retirement Act of 1974 is amended—

(1) beginning in the first sentence, by striking “, the Dual Benefits Payments Account” and all that follows through “may be made only” in the second sentence and inserting “and the Dual Benefits Payments Account as are not transferred to the Railroad Retirement Investment Trust as the Board may determine”;

(2) by striking “the Second Liberty Bond Act, as amended” and inserting “chapter 31 of title 31”; and

(3) by striking “the foregoing requirements” and inserting “the requirements of this subsection”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this section.

SEC. 106. ELIMINATION OF SUPPLEMENTAL ANNUITY ACCOUNT.

(a) SOURCE OF PAYMENTS.—Section 7(c)(1) of the Railroad Retirement Act of 1974 is amended by striking “payments of supplemental annuities under section 2(b) of this Act shall be made from the Railroad Retirement Supplemental Account, and”.

(b) ELIMINATION OF ACCOUNT.—Section 15(c) of the Railroad Retirement Act of 1974 is repealed.

(c) IN GENERAL.—Section 15(a) of the Railroad Retirement Act of 1974 is amended by striking “, except those portions of the amounts covered into the Treasury under sections 3211(b),” and all that follows through the end of the subsection and inserting a period.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect January 1, 2001, except that the Railroad Retirement Supplemental Account shall continue to exist until the transfer authorized by the following sentence occurs. As soon as possible after December 31, 2000, the Board shall determine the balance in the Railroad Retirement Supplemental Account and shall direct the Secretary of the Treasury to transfer such amount to the Railroad Retirement Trust Fund and the Secretary shall make such transfer.

SEC. 107. TRANSFER AUTHORITY REVISIONS.

(a) RAILROAD RETIREMENT ACCOUNT.—Section 15 of the Railroad Retirement Act of 1974 is amended by adding after subsection (j) the following:

“(k) TRANSFERS TO THE FUND.—The Board shall, upon establishment of the Railroad Retirement Trust Fund and from time to time thereafter, direct the Secretary of the Treasury to transfer, in such manner as will maximize the investment returns to the Railroad Retirement system, that portion of the Railroad Retirement Account that is not needed to pay current administrative expenses of the Board to the Railroad Retirement Trust Fund. The Secretary shall make that transfer.”

(b) RAILROAD RETIREMENT TRUST FUND.—Section 15 of the Railroad Retirement Act of 1974, as amended by subsection (a), is further amended by adding after subsection (k) the following:

“(l) RAILROAD RETIREMENT TRUST FUND.—The Railroad Retirement Trust shall from time to time transfer to the disbursing agent described in section 7(b)(4) such amounts as may be necessary to pay benefits under this Act (other than benefits paid from the Social Security Equivalent Benefit Account or the Dual Benefit Payments Account).”

(c) SOCIAL SECURITY EQUIVALENT BENEFIT ACCOUNT.—Section 15A(d)(2) of the Railroad Retirement Act of 1974 is amended to read as follows:

“(2) Upon establishment of the Railroad Retirement Trust Fund and from time to time thereafter, the Board shall direct the Secretary of the Treasury to transfer, in such manner as will maximize the investment returns to the Railroad Retirement system, the balance of the Social Security Equivalent Benefit Account not needed to pay current benefits required to be paid from that Account to the Railroad Retirement Trust Fund, and the Secretary shall make that transfer. Any balance transferred under this paragraph shall be used by the Railroad Retirement Trust only to pay benefits under this Act or to purchase obligations of the United States that are backed by the full faith and credit of the United States pursuant to chapter 31 of title 31, United States Code. The proceeds of sales of, and the interest income from, such obligations shall be used by the Trust only to pay benefits under this Act.”.

(2) TRANSFERS TO DISBURSING AGENT.—Section 15A(c)(1) of the Railroad Retirement Act of 1974 is amended by adding at the end the following: “The Secretary shall from time to time transfer to the disbursing agent under section 7(b)(4) amounts necessary to pay those benefits.”.

(3) CONFORMING AMENDMENT.—Section 15A(d)(1) of the Railroad Retirement Act of 1974 is amended by striking the second and third sentences.

(d) DUAL BENEFITS PAYMENTS ACCOUNT.—Section 15(d)(1) of the Railroad Retirement Act of 1974 is amended by adding at the end the following: “The Secretary of the Treasury shall from time to time transfer from the Dual Benefits Payments Account to the disbursing agent under section 7(b)(4) amounts necessary to pay benefits payable from that Account.”.

(e) CERTIFICATION BY THE BOARD AND PAYMENT.—Paragraph (4) of section 7(b) of the Railroad Retirement Act of 1974 is amended to read as follows:

“(4)(A) The Railroad Retirement Board, after consultation with the Board of Trustees of the Railroad Retirement Trust and the Secretary of the Treasury, shall enter into an arrangement with a nongovernmental financial institution to serve as disbursing agent for benefits payable under this Act who shall disburse consolidated benefits under this Act to each recipient.

“(B) The Board shall from time to time certify—

“(i) to the Secretary of the Treasury the amounts required to be transferred from the Social Security Equivalent Benefit Account and the the Dual Benefits Payments Account to the disbursing agent to make payments of benefits and the Secretary of the Treasury shall transfer those amounts;

“(ii) to the Board of Trustees of the Railroad Retirement Investment Trust the amounts required to be transferred from the Railroad Retirement Investment Trust to the disbursing agent to make payments of benefits and the Board of Trustees shall transfer those amounts; and

“(iii) to the disbursing agent the name and address of each individual entitled to receive a payment, the amount of such payment, and the time at which the payment should be made.”.

(f) BENEFIT PAYMENTS.—Section 7(c)(1) of the Railroad Retirement Act of 1974 is amended—

(1) by striking “from the Railroad Retirement Account” and inserting “by the disbursing agent under subsection (b)(4) from money transferred to it from the Railroad Retirement Trust Fund or the Social Security Equivalent Benefit Account, as the case may be”; and

(2) by inserting “by the disbursing agent under subsection (b)(4) from money transferred to it” after “Public Law 93–445 shall be made”.

(g) TRANSITIONAL RULE FOR EXISTING OBLIGATION.—In making transfers under subsections (a) and (c), the Board shall consult with the Secretary of the Treasury to design an appropriate method to transfer obligations held as of the date of enactment or to convert such obligations to cash prior to transfer. The Railroad Retirement Trust may hold to maturity any obligations so received or may redeem them prior to maturity, as the Trust deems appropriate.

SEC. 108. ANNUAL RATIO PROJECTIONS AND CERTIFICATIONS BY THE RAILROAD RETIREMENT BOARD.

(a) PROJECTIONS.—Section 22(a)(1) of the Railroad Retirement Act of 1974 is amended—

(1) by adding the following sentence after the first sentence: “On or before May 1 of each year beginning in 2002, the Railroad Retirement Board shall compute its projection of the account benefits ratio and the average account benefits ratio (as defined by section 3241(c) of the Internal Revenue Code of 1986) for each of the next succeeding five fiscal years.”; and

(2) by striking “the projection prepared pursuant to the preceding sentence” and inserting “the projections prepared pursuant to the preceding two sentences”.

(b) CERTIFICATIONS.—The Railroad Retirement Act of 1974 is amended by adding at the end the following:

“COMPUTATION AND CERTIFICATION OF ACCOUNT BENEFIT RATIOS

“SEC. 23. (a) On or before November 1, 2002, the Railroad Retirement Board shall—

“(1) compute the account benefits ratios for each of the most recent 10 preceding fiscal years, and

“(2) certify the account benefits ratios for each such fiscal year to the Secretary.

“(b) On or before November 1 of each year after 2002, the Railroad Retirement Board shall—

“(1) compute the account benefits ratio for the fiscal year ending in such year, and

“(2) certify the account benefits ratio for such fiscal year to the Secretary.

“(c) DEFINITION.—As used in this section, the term ‘account benefit ratio’ has the meaning given that term in section 3241(c) of the Internal Revenue Code of 1986.”.

TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986

SEC. 201. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

Except as otherwise provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 202. EXEMPTION FROM TAX FOR RAILROAD RETIREMENT INVESTMENT TRUST.

Subsection (c) of section 501 is amended by adding at the end the following new paragraph:

“(28) The Railroad Retirement Investment Trust established under section 15(j) of the Railroad Retirement Act of 1974.”

SEC. 203. REPEAL OF SUPPLEMENTAL ANNUITY TAX.

(a) REPEAL OF TAX ON EMPLOYEE REPRESENTATIVES.—Section 3211 is amended by striking subsection (b).

(b) REPEAL OF TAX ON EMPLOYERS.—Section 3221 is amended by striking subsections (c) and (d).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after December 31, 2000.

SEC. 204. EMPLOYER, EMPLOYEE REPRESENTATIVE, AND EMPLOYEE TIER 2 TAX RATE ADJUSTMENTS.

(a) RATE OF TAX ON EMPLOYERS.—Subsection (b) of section 3221 is amended to read as follows:

“(b) TIER 2 TAX.—

“(1) IN GENERAL.—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the applicable percentage of the compensation paid during any calendar year by such employer for services rendered to such employer.

“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term ‘applicable percentage’ means—

“(A) 15.6 percent in the case of compensation paid during 2001,

“(B) 14.2 percent in the case of compensation paid during 2002, and

“(C) in the case of compensation paid during any calendar year after 2002, the percentage determined under section 3241 for such calendar year.”.

(b) RATE OF TAX ON EMPLOYEE REPRESENTATIVES.—Section 3211, as amended by section 203, is amended by striking subsection (a) and inserting the following new subsections:

“(a) TIER 1 TAX.—In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the applicable percentage of the compensation received during any calendar year by such employee representative for services rendered by such employee representative. For purposes of the preceding sentence, the term ‘applicable percentage’ means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3101 and subsections (a) and (b) of section 3111 for the calendar year.

“(b) TIER 2 TAX.—

“(1) IN GENERAL.—In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the applicable percentage of the compensation received during any calendar year by such employee representatives for services rendered by such employee representative.

“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term ‘applicable percentage’ means—

- “(A) 14.75 percent in the case of compensation received during 2001,
- “(B) 14.20 percent in the case of compensation received during 2002, and
- “(C) in the case of compensation received during any calendar year after 2002, the percentage determined under section 3241 for such calendar year.

“(c) CROSS REFERENCE.—

“For application of different contribution bases with respect to the taxes imposed by subsections (a) and (b), see section 3231(e)(2).”.

(c) RATE OF TAX ON EMPLOYEES.—Subsection (b) of section 3201 is amended to read as follows:

“(b) TIER 2 TAX.—

“(1) IN GENERAL.—In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the applicable percentage of the compensation received during any calendar year by such employee for services rendered by such employee.

“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term ‘applicable percentage’ means—

- “(A) 4.90 percent in the case of compensation received during 2001 or 2002, and
- “(B) in the case of compensation received during any calendar year after 2002, the percentage determined under section 3241 for such calendar year.”.

(d) DETERMINATION OF RATE.—Chapter 22 is amended by adding at the end thereof the following new subchapter:

“Subchapter E—Tier 2 Tax Rate Determination

“Sec. 3241. Determination of tier 2 tax rate based on average account benefits ratio.

“SEC. 3241. DETERMINATION OF TIER 2 TAX RATE BASED ON AVERAGE ACCOUNT BENEFITS RATIO.

“(a) IN GENERAL.—For purposes of sections 3201(b), 3211(b), and 3221(b), the applicable percentage for any calendar year is the percentage determined in accordance with the table in subsection (b).

“(b) TAX RATE SCHEDULE.—

Average account benefits ratio		Applicable percentage for sections 3211(b) and 3221(b)	Applicable percentage for section 3201(b)
At least	But less than		
	2.5	22.1	4.9
2.5	3.0	18.1	4.9
3.0	3.5	15.1	4.9
3.5	4.0	14.1	4.9
4.0	6.1	13.1	4.9
6.1	6.5	12.6	4.4
6.5	7.0	12.1	3.9
7.0	7.5	11.6	3.4
7.5	8.0	11.1	2.9
8.0	8.5	10.1	1.9
8.5	9.0	9.1	0.9
9.0		8.2	0

“(c) DEFINITIONS RELATED TO DETERMINATION OF RATES OF TAX.—

“(1) AVERAGE ACCOUNT BENEFITS RATIO.—For purposes of this section, the term ‘average account benefits ratio’ means, with respect to any calendar year, the average determined by the Secretary of the account benefits ratios for the 10 most recent fiscal years ending before such calendar year. If the amount determined under the preceding sentence is not a multiple of 0.1, such amount shall be increased to the next highest multiple of 0.1.

“(2) ACCOUNT BENEFITS RATIO.—For purposes of this section, the term ‘account benefits ratio’ means, with respect to any fiscal year, the amount deter-

mined by the Railroad Retirement Board by dividing the fair market value of the assets in the Railroad Retirement Account and of the Railroad Retirement Investment Trust (and for the years before 2001, the Social Security Equivalent Benefits Account) as of the close of such fiscal year by the total benefits and administrative expenses paid from the Railroad Retirement Account and the Railroad Retirement Investment Trust during such fiscal year.

“(d) NOTICE.—No later than December 1 of each calendar year, the Secretary shall publish a notice in the Federal Register of the rates of tax determined under this section which are applicable for the following calendar year.”.

(e) CONFORMING AMENDMENTS.—

(1) Section 24(d)(3)(A)(iii) is amended by striking “section 3211(a)(1)” and inserting “section 3211(a)”.

(2) Section 72(r)(2)(B)(i) is amended by striking “section 3211(a)(2)” and inserting “section 3211(b)”.

(3) Paragraphs (2)(A)(iii)(II) and (4)(A) of section 3231(e) is amended by striking “3211(a)(1)” and inserting “3211(a)”.

(4) Section 3231(e)(2)(B)(ii)(I) is amended by striking “3211(a)(2)” and inserting “3211(b)”.

(5) The table of subchapters for chapter 22 is amended by adding at the end the following new item:

“Subchapter E. Tier 2 tax rate determination.”.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after December 31, 2000.

TITLE III—REPEAL OF 4.3-CENT MOTOR FUEL EXCISE TAXES ON RAILROADS AND INLAND WATERWAY TRANSPORTATION WHICH REMAIN IN GENERAL FUND

SEC. 301. REPEAL OF 4.3-CENT MOTOR FUEL EXCISE TAXES ON RAILROADS AND INLAND WATERWAY TRANSPORTATION WHICH REMAIN IN GENERAL FUND.

(a) TAXES ON TRAINS.—

(1) IN GENERAL.—Subparagraph (A) of section 4041(a)(1) of the Internal Revenue Code of 1986 is amended by striking “or a diesel-powered train” each place it appears and by striking “or train”.

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (C) of section 4041(a)(1) of such Code is amended by striking clause (ii) and by redesignating clause (iii) as clause (ii).

(B) Subparagraph (C) of section 4041(b)(1) of such Code is amended by striking all that follows “section 6421(e)(2)” and inserting a period.

(C) Subsection (d) of section 4041 of such Code is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

“(3) DIESEL FUEL USED IN TRAINS.—There is hereby imposed a tax of 0.1 cent per gallon on any liquid other than gasoline (as defined in section 4083)—

“(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

“(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such fuel under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081.”

(D) Subsection (f) of section 4082 of such Code is amended by striking “section 4041(a)(1)” and inserting “subsections (d)(3) and (a)(1) of section 4041, respectively”.

(E) Paragraph (3) of section 4083(a) of such Code is amended by striking “or a diesel-powered train”.

(F) Paragraph (3) of section 6421(f) of such Code is amended to read as follows:

“(3) GASOLINE USED IN TRAINS.—In the case of gasoline used as a fuel in a train, this section shall not apply with respect to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081.”

(G) Paragraph (3) of section 6427(l) of such Code is amended to read as follows:

“(3) REFUND OF CERTAIN TAXES ON FUEL USED IN DIESEL-POWERED TRAINS.—For purposes of this subsection, the term ‘nontaxable use’ includes fuel used in

a diesel-powered train. The preceding sentence shall not apply to the tax imposed by section 4041(d) and the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 except with respect to fuel sold for exclusive use by a State or any political subdivision thereof.”

(b) FUEL USED ON INLAND WATERWAYS.—

(1) IN GENERAL.—Paragraph (1) of section 4042(b) of such Code is amended by adding “and” at the end of subparagraph (A), by striking “, and” at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 4042(b) of such Code is amended by striking subparagraph (C).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2000.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

PURPOSE

The bill, H.R. 4844, as amended (the “Railroad Retirement and Survivors’ Improvement Act of 2000”) will reform the railroad retirement system and eliminate disparate excise tax treatment among transportation service providers.

The railroad retirement reform provisions of the bill have a net budgetary reduction of over \$17.6 billion over fiscal years 2000–2005. The repeal of the 4.3-cents-per-gallon General Fund excise taxes on railroad and inland waterway fuels provides a net reduction in taxes of \$566 million over fiscal years 2001–2005.

SUMMARY

Railroad retirement reform

Railroad Retirement Trust Fund.—The bill creates a new railroad retirement investment trust (the “Trust”) to administer a new railroad retirement trust fund (the “Fund”) established outside of Treasury. The Trust will be governed by a seven-member board of trustees which will independently manage and invest the assets of the Fund.

Railroad retirement benefits.—The bill increases tier 2 benefits for widows and widowers to 100 percent of the deceased employee’s benefits on the date of death. Also, the bill reduces the number of years of covered service to be vested in the railroad retirement system from 10 years to 5 years. In addition, the bill reduces the age at which full benefits are payable from 62 to 60 for employees with at least 30 years of rail service. Finally, the bill repeals the present-law maximum limit on monthly railroad retirement benefits.

Amendments to the Internal Revenue Code of 1986 (the “Code”).—The bill makes the following changes to the Code: (1) Lowers the tier 2 payroll tax rates for employers and employee representatives in 2001 and 2002 and provides a modified method of calculating the rate of all tier 2 taxes after 2002; (2) repeals the supplemental annuity tax; and (3) provides tax-exempt status for the Trust.

Excise tax on railroad and inland waterway fuels

The bill repeals the 4.3-cents-per-gallon General Fund excise taxes on diesel fuel used in trains and fuel used in barges operating on the designated inland waterways system.

B. BACKGROUND AND NEED FOR LEGISLATION

The railroad retirement reform provisions approved by the Committee reflect the need for reform of the railroad employee benefit system while increasing certain railroad retirement benefits and reducing certain railroad retirement taxes. The bill also eliminates disparate treatment between rail and barge transportation providers and other competing providers by repealing a general fund fuel tax imposed on the rail and barge industry.

C. LEGISLATIVE HISTORY

COMMITTEE ACTION

The Committee on Ways and Means marked up the provisions of the bill on July 25, 2000, and approved the provisions, as amended, on July 25, 2000, by a voice vote with a quorum present.

II. EXPLANATION OF THE BILL

A. RAILROAD RETIREMENT REFORM

1. Amendments to the Railroad Retirement Act of 1974
 - a. Structure and administration of railroad employee benefit system (secs. 105108 of the bill and secs. 3, 4, 7, 15, and 22 of the Railroad Retirement Act of 1974)

PRESENT LAW

The Railroad Retirement Board is the Federal agency responsible for the administration of the Federal employment benefits system earned through railroad industry employment. It is headed by a three-member governing board that oversees its operations. The railroad retirement system provides retirement, disability and survivor benefits to qualifying individuals.¹ Generally, a qualifying individual is any eligible individual with at least ten years of railroad service and such an individual's spouse and dependents. The system, funded primarily by payroll taxes on covered employers and employees, includes a benefit roughly equivalent to Social Security (the "tier 1" benefit), an additional benefit similar to those provided in some private defined benefit pension plans (the "tier 2" benefit), and certain other benefits. Amounts received into the railroad retirement system are held in Federal accounts (primarily in the railroad retirement account) within the Federal Treasury until needed to pay benefits. The money in these accounts is invested in special interest-bearing Treasury obligations.

REASONS FOR CHANGE

Between 1985 and 1998, the average annual return on Railroad Retirement Account (RRA) assets was 9.12 percent. This return lagged far behind the 15.17 percent return earned by large multi-employer pension plans over the same period. The bill allows the railroad retirement industry pension (tier 2) to take advantage of the higher returns available in the private sector in an account es-

¹The railroad unemployment insurance system also provides uniform unemployment insurance to covered employees.

established outside of Treasury. The increased income projected from private investment permits an increase in employee benefits and a reduction in employer tax rates while maintaining an average benefit reserve of 4 years or more.

EXPLANATION OF PROVISION

Railroad Retirement Trust Fund

The bill creates a new railroad retirement investment trust (the "Trust") to administer a new railroad retirement trust fund (the "Fund") established outside of Treasury. The bill describes the Trust as a private entity which is not a department, agency, or instrumentality of the Federal government. The Trust will be governed by a seven-member board of trustees.² The board will independently manage and invest the assets of the Fund. Five members of the board will comprise a quorum and, with the exception of the adoption of investment guidelines, which must be by a unanimous vote of the trustees, all decisions will be made by a majority vote. The board of trustees will: (1) set investment guidelines for the management of Fund assets and select outside investment advisors and managers to implement the board's decisions; (2) transfer funds to a centralized, nongovernmental disbursement agent that will pay the various components of the railroad retirement benefits in a single check to beneficiaries; and (3) pay administrative expenses of the Trust. The board will be subject to fiduciary standards similar to those applicable to pension fund fiduciaries under the Employee Retirement Income Security Act of 1974, as amended. These fiduciary standards will be enforced by the Railroad Retirement Board.

The Trust's financial statements will be audited by an independent qualified public accountant. The Trust will be required to produce an annual management report to Congress about the operations and financial condition of the Trust and the Fund. The Trust's legal domicile will be the District of Columbia.

Transfers to the fund

Upon the creation of the Trust and the Fund, the Railroad Retirement Board will direct the Secretary of the Treasury to transfer to the Fund: (1) the portion of the railroad retirement account which is not needed to pay current administrative expenses; and (2) the portion of the Social Security equivalent benefit account³ which is not needed to pay current benefits. The board of trustees for the Trust are to consult with the Secretary of the Treasury to develop an appropriate method for transferring or converting existing obligations held by the accounts.

EFFECTIVE DATE

The provisions generally are effective on the date of enactment.

²The board of trustees will be comprised of the following seven members: (1) three will represent the interests of labor; (2) three will represent the interests of management; and (3) one will represent the interests of the general public. The three members of the Railroad Retirement Board will not be eligible to serve on the board of trustees. The term of each member of the board of trustees will be three years but the initial members will have staggered terms.

³The Social Security equivalent benefit account annually receives amounts from or pays amounts to the Social Security trust funds based upon a hypothetical calculation which assumes railroad employment had been directly covered by Social Security.

- b. Increased railroad retirement benefits (secs. 101–104 of the bill and secs. 2, 3, 4, 5, 18, and 19 of the Railroad Retirement Act of 1974)

PRESENT LAW

Annuity benefits for widows and widowers

The railroad retirement system, funded primarily by payroll taxes on covered employers and employees, provides a benefit roughly equivalent to Social Security (the “tier 1” benefit), an additional benefit similar to those provided in some private defined benefit pension plans (the “tier 2” benefit), and certain other benefits. The spouse of a deceased railroad employee may be eligible for any of these benefits.⁴ A widow’s or widower’s tier 1 benefit generally equals the amount of the deceased employee’s tier 1 benefits on the date of death. Tier 2 benefits for the widow or widower, however, are limited to one-half of the deceased employee’s tier 2 benefits on the date of death.

Retirement age

Generally, an employee aged 60 with 30 years of service may retire and collect full tier 2 benefits. However, tier 1 benefits for an employee aged 60 with 30 years of service are actuarially reduced for retirement before age 62.

Vesting requirements

Under present law, an employee must have 10 years of covered service to be vested in the railroad retirement system.

Railroad retirement maximum benefit

Present law limits the total amount of monthly railroad retirement benefits payable to an employee and an employee’s spouse at the time the employee’s annuity payout begins. The maximum benefit is based on the highest two years of creditable railroad retirement or social security covered earnings in the 10-year period ending with the year the employee’s annuity payout begins.

REASONS FOR CHANGE

The bill makes several changes to the benefit structure of the Railroad Retirement system. First, widow(er) benefits are increased. This change is made because widow(er) benefits are thought to be inadequate. Concurrent resolutions (H. Con. Res. 52 and S. Con. Res. 80) introduced in both the House of Representatives and the Senate urged rail labor, management, and retirees to negotiate an improvement to widow(er) benefits. This proposal incorporates the negotiated improvements. Second, vesting requirements are reduced from 10 years to 5 years. Under current law, workers with less than 10 years of rail service are ineligible for benefits under the railroad retirement system, and they forfeit all of their payroll tax contributions to the system. A 5-year vesting requirement is consistent with many multi-employer pension plans

⁴ Generally, the benefits for the surviving spouse are calculated with reference to the railroad retirement benefit for the deceased employee at the date of death before any benefit reductions required under the Railroad Retirement Act, the Social Security Act, and any public service pension.

covered by ERISA. Third, the retirement age at which full benefits are payable for career workers is reduced from 62 to 60 for Tier I. (Historically, the full retirement age was 60. However, the age was increased to 62 in 1983 when the Railroad Retirement system faced insolvency.) Finally, the railroad benefit maximum is repealed. This provision in current law is intended to limit benefits for certain workers. However, it unintentionally affects spouses and many low-wage workers who may have worked in low-paying jobs in the 10 years prior to benefit entitlement.

EXPLANATION OF PROVISION

Benefits for widows and widowers

The bill increases tier 2 benefits for widows and widowers to 100 percent of the deceased employee's benefits on the date of death. When coupled with the present-law tier 1 benefit for widows and widowers, the bill provides widows and widowers essentially the same benefit as that payable to the railroad employee prior to death.

Retirement age

The bill reduces the age at which full tier 1 benefits are payable from 62 to 60 for employees with at least 30 years of rail service.

Vesting requirements

The bill reduces the years of covered service to be vested in the railroad retirement system from the present 10 years to 5 years. For this purpose, employees with less than 10 years of railroad employment before 1996 will have to meet either the 10-year vesting requirement or have 5 years of post-1995 railroad service to be vested.

Railroad retirement maximum benefit

The bill repeals the present-law maximum limit on monthly railroad retirement benefits.

EFFECTIVE DATE

The provision related to the expansion of benefits to widows and widowers is effective on January 1, 2001, and applies to annuity amounts accruing after December 31, 2000. The provision related to retirement is effective for annuities that begin to accrue on or after January 1, 2001. The provision relating to the faster vesting requirement is effective after December 31, 2001. The provision relating to the repeal of the railroad retirement maximum benefit is effective on January 1, 2001, and applies to annuity amounts accruing for months after December 31, 2000.

2. Amendments to the Internal Revenue Code of 1986 (the "Code") (secs. 201–204 of the bill and secs. 501, 3201, 3211, 3221, and 3241 of the Code)

PRESENT LAW

In general

Present law also imposes a tier 1 tax on railroad employers, employees, and employee representatives. This tax is essentially

equivalent to Social Security taxes, and is used primarily to fund tier 1 benefits, which are essentially equivalent to Social Security benefits. Tier 2 railroad retirement benefits are funded primarily through a tier 2 payroll tax. Present law also imposes a supplemental annuity tax, which is used to finance supplemental annuity benefits, as well as some tier 2 benefits.

Tier 2 payroll taxes

Present law imposes a tier 2 payroll tax on railroad employers, employees, and employee representatives. The tax on employers is equal to 16.1 percent of covered compensation. The employee-level tax is equal to 4.9 percent of covered compensation.⁵ The tier 2 tax on railroad employee representatives is equal to 14.75 percent of covered compensation.

The maximum amount of compensation taken into account for tier 2 payroll tax purposes is \$56,700 (for 2000).

Supplemental annuity tax

A cents-per-hour tax is imposed on railroad employers and employee representatives to fund supplemental annuity benefits. The rate of tax is determined quarterly by the Railroad Retirement Board based on the level necessary to fund current benefits, plus administrative costs. The current rate of tax is 26.5 cents per hour. Special rules apply in the case of an employer with respect to employees covered by a supplemental pension plan established pursuant to collective bargaining.

REASONS FOR CHANGE

The bill reduces the tier 2 payroll tax rate paid by employers and employee representatives and provides a tax adjustment mechanism for years after 2002. According to the Railroad Retirement Board, the assets of the RRA at the end of 2000 will be sufficient to pay more than 5 years of benefits. As a result, the tier 2 tax rate can be lowered over the next two years without impacting the ability to pay benefits. Beyond the next two years, the tax rate will be set each calendar year pursuant to a statutory formula based on the average benefit ratio. If the program becomes underfunded, the tax rate will automatically increase to bolster the system's income, placing the burden and investment risk on the industry rather than the general taxpayer. Alternatively, if the trust fund balance increases to a certain level relative to benefit payments, tax rates will decrease. The automatic tax adjustment mechanism allows the tax rate to be more responsive to the system's financing needs.

EXPLANATION OF PROVISION

In general

The bill makes the following changes to the Code: (1) lowers the tier 2 payroll tax rates for employers and employee representatives in 2001 and 2002 and provides a modified method of calculating the rate of all tier 2 taxes after 2002; (2) repeals the supplemental annuity tax; and (3) provides tax-exempt status for the Trust created by the bill (described in A.1., above).

⁵ Like tier 1 and Social Security taxes, the employee-level tier 2 tax is deducted from the employee's compensation and remitted by the employer.

Payroll taxes

The bill lowers the tier 2 tax rate on employers to 15.6 percent of covered compensation in 2001 and 14.2 percent in calendar year 2002. The bill lowers the tier 2 tax rate for employee representatives to 14.75 percent of covered compensation in 2001 and 14.2 percent in calendar year 2002. The bill does not change the tier 2 tax on employees for 2001 and 2002.

Beginning in calendar year 2003, the bill provides for automatic modifications in the tier 2 tax rates for employers, employee representatives, and employees based on the ratio of certain asset balances to the sum of benefits and administrative expenses (the “average account benefits ratio”). The average account benefits ratio is the sum of the account benefits ratio for the previous 10 fiscal years divided by 10. The account benefits ratio is determined by dividing the sum of the fair market value of the assets in the railroad retirement account and the Trust at the close of the fiscal year by the sum of total benefit payments and administrative expenses of the Trust for such fiscal year. Because the average account benefits ratio is expected to be between 4.0 and 6.1 in 2003, the table is designed to produce a 13.1 tax rate for employers and employee representatives and a 4.9 tax rate for employees in calendar year 2003. The Secretary of the Treasury is to use the following table to make adjustments to the tier 2 tax rates.

Average account benefits ratio		Applicable percentage for employer and employee representative tier 2 taxes (percent)	Applicable percentage for employee tier 2 taxes (percent)
At least	But less than		
	2.5	22.1	4.9
2.5	3.0	18.1	4.9
3.0	3.5	15.1	4.9
3.5	4.0	14.1	4.9
4.0	6.1	13.1	4.9
6.1	6.5	12.6	4.4
6.5	7.0	12.1	3.9
7.0	7.5	11.6	3.4
7.5	8.0	11.1	2.9
8.0	8.5	10.1	1.9
8.5	9.0	9.1	0.9
9.0		8.2	0

Supplemental annuity tax

The bill repeals the supplemental annuity tax.⁶ Supplemental annuity benefits are not affected by the elimination of the supplemental annuity tax.

Tax exemption for the trust

The bill provides tax-exempt status under Code section 501(c) for the Trust created under the bill.

EFFECTIVE DATE

The provisions generally are effective for calendar years beginning after December 31, 2000. The provision relating to tax-exempt status of the Trust is effective on the date of enactment.

⁶The funds in the supplemental annuity account will be transferred to the Fund and the account will be eliminated by the Railroad Retirement Board as soon as possible after December 31, 2000.

B. REPEAL THE 4.3-CENTS-PER-GALLON GENERAL FUND EXCISE TAXES ON TRAIN DIESEL FUEL AND INLAND WATERWAYS BARGE FUELS (SEC. 301 OF THE BILL AND SECS. 4041, 4042, 4081–4083, AND 6427 OF THE CODE)

PRESENT LAW

Diesel fuel used in trains is subject to a 4.4-cents-per-gallon excise tax. Revenues from 4.3 cents per gallon of this excise tax are retained in the General Fund of the Treasury. The remaining 0.1 cent per gallon is deposited in the Leaking Underground Storage Tax (“LUST”) Trust Fund.

Similarly, fuel used in barges operating on a designated inland waterways system is subject to a 4.3-cents-per-gallon General Fund excise tax. This tax is in addition to the 20.1-cents-per-gallon tax rates that are imposed on fuel used in these barges to fund the Inland Waterways Trust Fund and the LUST Trust Fund.

In both cases, the 4.3-cents-per-gallon excise tax rates are permanent. The LUST tax rate is scheduled to expire after March 31, 2005.

REASONS FOR CHANGE

In 1993, Congress enacted an additional 4.3-cents-per-gallon excise tax rate on almost all motor fuels. Receipts from the tax were payable entirely to the General Fund for deficit reduction. Since 1993, Congress has transferred receipts from the 4.3-cents-per-gallon rate to specified trust funds in the case of transportation modes other than rail and inland waterway barges. In the case of the other transportation modes, programs financed by these trust funds benefit the persons bearing the ultimate burden of the taxes.

The Committee is aware that rail and inland waterway barge operators compete with other transportation service providers who benefit from those trust funds. The Committee concluded that it is inequitable and distortive of transportation decisions to continue to impose the General Fund tax on rail and barge users. Further, any deficit reduction purpose for the 4.3-cents-per-gallon tax rate has been eliminated by current budget surpluses.

EXPLANATION OF PROVISION

The bill repeals the 4.3-cents-per-gallon General Fund excise taxes on diesel fuel used in trains and fuel used in barges operating on the designated inland waterways system.

EFFECTIVE DATE

The provision is effective on October 1, 2000.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee on Ways and Means in its consideration of the bill, H.R. 4844.

MOTION TO REPORT THE BILL

The bill, H.R. 4844, as amended, was ordered favorably reported by a voice vote (with a quorum being present).

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 4844, as reported.

The bill is estimated to have the following budget effects for fiscal years 2001-2010:

ESTIMATED BUDGET EFFECTS OF H.R. 4844, THE "RAILROAD RETIREMENT AND SURVIVORS' IMPROVEMENT ACT OF 2000," AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

[fiscal years 2001–2010, in millions of dollars]

Provision	Effective	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001–05	2001–10
Railroad Retirement Provisions Contained in H.R. 4844⁽¹⁾													
Changes in Direct Spending:													
1. Benefit Changes:													
a. Expansion of Widow/er Benefits	1/1/01	-68	-91	-91	-93	-94	-96	-98	-100	-101	-103	-437	-935
b. Retirement Age Restoration	1/1/01	-31	-105	-172	-209	-234	-260	-304	-355	-391	-412	-751	-2,473
c. Vesting Requirements	1/1/01	.....	.....	.....	.....	.....	.....	-1	-1	-1	-2	.....	-5
d. Repeal of Railroad Retirement Maximum	1/1/01	-10	-14	-14	-15	-16	-17	-18	-19	-21	-23	-69	-167
2. Net Purchases of Private Securities ⁽²⁾	1/1/01	-14,760	-180	-20	130	190	250	290	350	440	520	-14,640	-12,790
Total of Changes in Direct Spending		-14,869	-390	-297	-186	-153	-124	-131	-125	-75	-20	-15,895	-16,370
Changes in Revenue:													
1. Repeal of Supplemental Annuity Tax ⁽³⁾	1/1/01	-60	-79	-81	-81	-79	-77	-76	-75	-74	-74	-380	-756
2. Adjustment in Tier 2 Tax Rate ⁽³⁾	1/1/01	-74	-197	-321	-354	-357	-360	-367	-370	-377	-381	-1,303	-3,158
Total of Changes in Revenue		-134	-276	-402	-435	-436	-437	-443	-445	-451	-455	-1,683	-3,914
Total of Railroad Retirement Provisions Contained in H.R. 4844 (All Direct Spending and Revenues)		-15,003	-666	-699	-621	-589	-561	-574	-570	-526	-475	-17,578	-20,284
Revenue Provision Contained in H.R. 4844—Repeal the 4.3-Cents-Per-Gallon Tax on Railroad Diesel Fuel and Inland Waterway Fuel Currently Paid Into the General Fund.	10/1/00	-105	-110	-113	-115	-123	-126	-129	-131	-135	-138	-566	-1,225
Net Total		-15,108	-776	-812	-736	-712	-687	-703	-701	-661	-613	-18,144	-21,509

¹ Estimates provided by the Congressional Budget Office ("CBO").

² Scoring the purchase of non-U.S. securities follows the instruction from OMB curricular A-11. Because CBO assumes that the investment board will maintain 20 percent of the portfolio in U.S. Treasury securities, small amounts of the investment returns from private securities are assumed to be used to purchase additional Treasury securities.

³ Assumes payroll tax reductions are offset by 20 percent by income tax collections.

Note.—Details may not add to totals due to rounding.

Source: Joint Committee on Taxation.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX
EXPENDITURES

Budget authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority.

Tax expenditures

In compliance with clause 2(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the revenue-reducing income tax provisions do not involve increased tax expenditures. (See amounts in table in Part IV.A., above.)

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET
OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office ("CBO"), the following statement by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 25, 2000.

Hon. BILL ARCHER,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached preliminary analysis of the effect on direct spending and revenues of H.R. 4844, the Railroad Retirement and Survivors' Improvement Act of 2000, as reported by the Committee on Ways and Means on July 25, 2000.

H.R. 4844 would make a number of changes to the Railroad Retirement program. The legislation would expand certain types of pension benefits for those participating in the railroad retirement program and decrease the number of years of covered service needed before a worker (and qualified spouse) can be vested in the system. The legislation would also eliminate the supplemental annuity tax and reduce the railroad retirement payroll tax on railroad employers.

The bill would create a new Railroad Retirement Investment Trust Fund and establish a board to manage funds in the new account. Funds not needed to pay benefits would be managed by the newly created investment board so as to ensure maximum financial return to the trust fund. Potential investment instruments would include government securities, corporate securities, and private equities.

The Ways and Means version of this bill also contains a provision unrelated to the Railroad Retirement system. It would repeal the 4.3-cents-per-gallon excise tax on railroad diesel and inland waterway fuel.

CBO estimates that H.R. 4844 would increase direct spending by \$13.2 billion over the 2001–2005 period and by \$9.7 billion over the 2001–2010 period. We also estimate that repealing the supplemental annuity tax and reducing railroad retirement payroll taxes

would lower revenues by \$1.7 billion during the 2001–2005 period and by \$3.9 billion over the 2001–2010 period (net of income tax effects). The Joint Committee on Taxation estimates that repealing the excise tax on railroad diesel fuel and inland waterway fuel would reduce revenue by \$0.6 billion from 2001 through 2005 and by \$1.2 billion from 2001 through 2010. In total, H.R. 4844 would reduce the federal surplus by \$15.4 billion during the 2001–2005 period and by \$14.9 billion over the 2001–2010 period.

These estimates assume that purchases of private securities would be shown as budget outlays, as is prescribed in the Office of Management and Budget Circular A–11. This budgetary treatment is unsettled, however, because the federal government has rarely if ever purchased such securities for investment purposes. Some of the potential alternative budgetary treatments would result in substantially different estimates of outlays.

As indicated in a letter sent to you earlier today, the bill does not contain any intergovernmental or private-sector mandates as defined by the Unfunded Mandates Act.

CBO will prepare a more detailed cost estimate for H.R. 4844 and transmit it to the Congress. I hope this information is helpful to you. The CBO staff contact is Geoff Gerhardt.

Sincerely,

STEVEN LIEBERMAN
(For Dan Crippen, Director).

Attachment.

PRELIMINARY CBO ESTIMATE OF H.R. 4844, THE RAILROAD RETIREMENT AND SURVIVORS' IMPROVEMENT ACT OF 2000, AS ORDERED REPORTED BY THE COMMITTEE ON WAYS AND MEANS
By fiscal year, in millions of dollars—

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Changes in Direct Spending											
Benefit Changes:											
Expansion of Widow/er Benefits	0	68	91	91	93	94	96	98	100	101	103
Retirement Age Res-toration	0	31	105	172	209	234	260	304	355	391	412
Vesting Requirements ..	0	(^{2})	(^{2})	(^{2})	(^{2})	(^{2})	(²)	1	1	1	2
Repeal of Railroad Re-tirement Maximum Benefit	0	10	14	14	15	16	17	18	19	21	23
Subtotal	0	109	210	277	316	343	374	421	475	515	540
Net Purchases of Private Se-curities ¹	0	14,760	-460	-650	-830	-920	-990	-1,060	-1,130	-1,240	-1,340
Total	0	14,869	-250	-373	-514	-577	-616	-639	-655	-725	-800
Changes in Revenue											
Repeal of Supplemental An-nuity Tax ³	0	-60	-79	-81	-81	-79	-77	-76	-75	-74	-74
Adjustment in Tier 2 Tax Rate ³	0	-74	-197	-321	-354	-357	-360	-367	-370	-377	-381
Repeal of Excise Tax on Rail-road and Inland Waterway Fuels	0	-105	-110	-113	-115	-123	-126	-129	-131	-135	-138
Total	0	-239	-386	-515	-550	-559	-563	-572	-576	-586	-593
Total Changes in the Budget Surplus											
Increase or Decrease (-) in the Surplus	0	-15,108	-136	-142	-36	18	53	67	79	139	207

¹ Scoring the purchase of non-U.S. securities follows the instruction from OMB circular A–11. CBO assumes that the investment board will maintain 20 percent of the portfolio in U.S. Treasury securities, 20 percent in corporate securities, and 60 percent in private equities.

² Less than \$500,000.

³ Assumes that 20 percent of payroll tax reductions are offset by increased income tax collections.

Notes.—Components may not sum to totals because of rounding.
Source: Congressional Budget Office and the Joint Committee on Taxation.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was a result of the Committee's oversight review of the railroad retirement system and of Federal transportation excise taxes that the Committee concluded that it is appropriate and timely to enact the provisions included in the bill as reported.

B. SUMMARY OF FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT REFORM

With respect to clause 3(c)(4) of rule XII of the Rules of the House of Representatives, the Committee advises that no oversight findings or recommendations have been submitted to this Committee by the Committee on Government Reform with respect to the provisions contained in the bill.

C. CONSTITUTIONAL AUTHORITY STATEMENT

With respect to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises * * *"), and from the 16th Amendment to the Constitution.

D. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104-4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, and tribal governments.

E. APPLICABILITY OF HOUSE RULE XXI5(b)

Rule XXI5(b) of the Rules of the House of Representatives provides, in part, that "No bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase shall be considered as passed or agreed to unless determined by a vote of not less than three-fifths of the Members." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increase within the meaning of the rule.

F. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legisla-

tion reported by the House Committee on Ways and Means, the Senate Committee on Finance, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have “widespread applicability” to individuals or small businesses.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

RAILROAD RETIREMENT ACT OF 1974

* * * * *

ANNUITY ELIGIBILITY REQUIREMENTS

SEC. 2. (a)(1) The following-described individuals, if they shall have completed ten years of service *or, for purposes of paragraphs (i), (iii), and (v), five years of service, all of which accrues after December 31, 1995,* and shall have filed application for annuities, shall, subject to the conditions set forth in subsections (e), (f), and (h), be entitled to annuities in the amounts provided under section 3 of this Act—

(i) * * *

* * * * *

(4) An individual who is entitled to an annuity under paragraph (v) of subdivision (1), but who does not have at least ten years of service, shall, prior to the month in which the individual attains age 62, be entitled only to an annuity amount computed under section 3(a) of this Act (without regard to section 3(a)(2) of this Act) or section 3(f)(3) of this Act. Upon attainment of age 62, such an individual may also be entitled to an annuity amount computed under section 3(b), but such annuity amount shall be reduced for early retirement in the same manner as if the individual were entitled to an annuity under section 2(a)(1)(iii).

* * * * *

(d)(1) The following described survivors of a deceased employee who will have completed ten years of service *or five years of service, all of which accrues after December 31, 1995,* and will have had a current connection with the railroad industry at the time of his death shall, subject to the conditions set forth in subsections (g) and (h), be entitled to annuities, if they have filed application therefor, in the amounts provided under section 4 of this Act—

(i) * * *

* * * * *

(i) An individual entitled to an annuity under this section who has completed five years of service, all of which accrues after 1995, but who has not completed ten years of service, and the spouse, divorced spouse, and survivors of such individual, shall not be entitled to an annuity amount provided under section 3(a), section 4(a), or section 4(f) of this Act unless the individual, or the individual's spouse, divorced spouse, or survivors, would be entitled to a benefit under the Social Security Act on the basis of the individual's employment record under both the Railroad Retirement Act and the Social Security Act.

COMPUTATION OF EMPLOYEE ANNUITIES

SEC. 3. (a)(1) * * *

(2) For purposes of this subsection, individuals entitled to an annuity under section 2(a)(1)(ii) of this Act shall, except for the purposes of recomputations in accordance with section 215(f) of the Social Security Act, be deemed to have attained retirement age (as defined by section 216(l) of the Social Security Act). For purposes of this subsection, individuals entitled to an annuity under paragraph (iv) or (v) of such section 2(a)(1) shall be deemed to be entitled to a disability insurance benefit under section 223 of the Social Security Act.

[(3) In lieu of an annuity amount provided under subdivision (1), the annuity of an individual entitled to an annuity under paragraph (ii) of section 2(a)(1) of this Act which begins to accrue before the individual attains age 62 shall be in an amount equal to—

[(i) for each month prior to the first month throughout which the individual is age 62, the amount (after any reduction on account of age but before any deductions on account of work) of the old-age insurance benefit to which such individual would have been entitled under the Social Security Act as of the date on which such individual's annuity begins to accrue if such individual had attained age 62 on the first day of the month in which his or her annuity begins to accrue and if all of such individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act, using for purposes of this computation the number of benefit computation years applicable to a person born in the year in which such individual was born; and

[(ii) for months beginning with the first month throughout which the individual is age 62, the amount (after any reduction on account of age but before any deductions on account of work) of the old-age insurance benefit to which such individual would have been entitled under the Social Security Act if all of such individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.]

(3) If an individual entitled to an annuity under section 2(a)(1)(i) or (iii) of this Act on the basis of less than ten years of service is entitled to a benefit under section 202(a), section 202(b), or section 202(c) of the Social Security Act which began to accrue before the annuity under section 2(a)(1)(i) or (iii) of this Act, the annuity amount provided such individual under this subsection, shall be computed as though the annuity under this Act began to accrue on the later of (A) the date on which the benefit under section 202(a),

section 202(b), or section 202(c) of the Social Security Act began or (B) the date on which the individual first met the conditions for entitlement to an age reduced annuity under this Act other than the conditions set forth in sections 2(e)(1) and 2(e)(2) of this Act and the requirement that an application be filed.

* * * * *

[(f)(1) If the total amount of an individual's annuity and supplemental annuity computed under the preceding subsections of this section would, before any reductions on account of age, before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act, and disregarding any increases in such total amount which become effective after the date on which such individual's annuity under section 2(a)(1) of this Act begins to accrue, exceed an amount equal to the sum of (A) 100 per centum of his "final average monthly compensation" up to an amount equal to 50 per centum of one-twelfth of the maximum annual taxable "wages" (as defined in section 3121 of the Internal Revenue Code of 1954) for the calendar year in which such individual's annuity under section 2(a)(1) of this Act begins to accrue, plus (B) 80 per centum of so much of his "final average monthly compensation" as exceeds 50 per centum of one-twelfth of the maximum annual taxable "wages" (as defined in section 3121 of the Internal Revenue Code of 1954) for the calendar year in which such individual's annuity under section 2(a)(1) of this Act begins to accrue, the supplemental annuity of such individual first, and then, if necessary, the annuity amount of such individual as computed under subsection (b) of this section, shall be reduced until such total amount of such individual's annuity and supplemental annuity equals such sum or until such supplemental annuity and such annuity amount computed under subsection (b) of this section are reduced to zero, whichever occurs first: *Provided, however,* That the provisions of this subdivision shall not operate to reduce the total amount of an individual's annuity and supplemental annuity computed under the preceding subsections of this section below \$1,200. For purposes of this subdivision, the "final average monthly compensation" of an individual shall except as provided in the following sentence be determined by dividing the total compensation received by such individual in the two calendar years, consecutive or otherwise, in which he was credited with the highest total compensation during the ten-year period ending with December 31 of the year in which such individual's annuity under section 2(a)(1) of this Act begins to accrue by 24. If the individual's "average monthly compensation" is determined under subdivision (2) of subsection (b) of this section, the "final average monthly compensation" for such individual shall be the average of the compensation for the 24 months in which the compensation determined for the purpose of subdivision (2) of subsection (b) of this section is the highest. For purposes of this subdivision, the term "compensation" shall include "compensation" as defined in section 1(h) of this Act, "wages" as defined in section 209 of the Social Security Act, "self-employment income" as defined in section 211(b) of the Social Security Act, and wages deemed to have been paid under section 217 or 229 of the Social Security Act on account of military service: *Provided, however,* That in no case shall the compensation with respect to any calendar month exceed the limitation on the com-

compensation for such month prescribed in subsection (j) of this section. Wages and self-employment income included as compensation for purposes of this subdivision shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the calendar quarter in which credited, in the case of wages paid before 1978, or in equal proportions with respect to all months in the calendar year in which credited, in the case of self-employment income and in the case of wages paid after 1977.]

* * * * *

COMPUTATION OF SPOUSE AND SURVIVOR ANNUITIES

SEC. 4. (a)(1) * * *

(2) For purposes of this subsection, [if an individual is entitled to an annuity under paragraph (ii) of section 2(a)(1) of this Act which did not begin to accrue before such individual attained age 62, the spouse of such individual entitled to an annuity under clause (B) of paragraph (ii) of section 2(c)(1) of this Act] *a spouse entitled to an annuity under section 2(c)(1)(ii)(B) of this Act* shall be deemed to have attained retirement age (as defined in section 216(1) of the Social Security Act.

[(3) In the case of an individual entitled to an annuity under section 2(a)(1)(ii) of this Act which began to accrue before such individual attained age 62, the annuity of the spouse of such individual under section 2(c) of this Act shall, in lieu of an annuity amount provided under subdivision (1), be in an amount equal to—

[(i) for each month prior to the first month throughout which both the individual and the spouse are age 62, 50 per centum of that portion of the individual's annuity as is, or was prior to such individual's attaining age 62, computed under section 3(a)(3)(i) of this Act, reduced to the same extent such amount would be reduced under section 202(b)(4) of the Social Security Act (in the case of a wife) or under section 202(c)(2) of the Social Security Act (in the case of a husband) as if such amount were a wife's insurance benefit or a husband's insurance benefit, respectively, under such Act; and

[(ii) for months beginning with the first month throughout which both the individual and the spouse are age 62, the amount (after any reduction on account of age are based on the spouse's age at the time the amount under this paragraph first becomes payable but before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse would have been entitled under the Social Security Act if the individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

[(4) In the case of an individual entitled to an annuity under paragraph (iv) or (v) of section 2(a)(1) of this Act, the annuity of the spouse of such individual entitled to an annuity under section 2(c)(1)(ii)(B) of this Act shall, in lieu of an annuity amount provided under subdivision (1), be in an amount equal to the amount (after any reduction on account of age but before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse would have been entitled

under the Social Security Act if the individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act. For purposes of this subdivision, spouses who have not attained age 62 shall be deemed to have attained age 62.】

(3) If a spouse entitled to an annuity under section 2(c)(1)(ii)(A), section 2(c)(1)(ii)(C), or section 2(c)(2) of this Act or a divorced spouse entitled to an annuity under section 2(c)(4) of this Act on the basis of the employment record of an employee who will have completed less than 10 years of service is entitled to a benefit under section 202(a), section 202(b), or section 202(c) of the Social Security Act which began to accrue before the annuity under section 2(c)(1)(ii)(A), section 2(c)(1)(ii)(C), section 2(c)(2), or section 2(c)(4) of this Act, the annuity amount provided under this subsection shall be computed as though the annuity under this Act began to accrue on the later of (A) the date on which the benefit under section 202(a), section 202(b), or section 202(c) of the Social Security Act began or (B) the first date on which the annuitant met the conditions for entitlement to an age reduced annuity under this Act other than the conditions set forth in sections 2(e)(1) and 2(e)(2) of this Act and the requirement that an application be filed.

* * * * *

【(c) If (A) the total amount of the annuity of a spouse of an individual as computed under the preceding subsections of this section as of the date on which the annuity of such individual under section 2(a)(1) of this Act began to accrue (before any reduction due to such spouse's entitlement to a monthly insurance benefit under the Social Security Act) plus (B) the total amount of the annuity and supplemental annuity of the individual (before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act) subject to the provisions of section 3(f)(1) of this Act would, before any reductions in the amounts specified in clauses (A) and (B) on account of age and disregarding any increases in such amounts which become effective after the date on which the individual's annuity under section 2(a)(1) of this Act began to accrue, exceed the amount determined under clauses (A) and (B) of section 3(f)(1) of this Act, the portion of the annuity of such spouse determined under subsection (b) of this section as of the date on which the individual's annuity under section 2(a)(1) began to accrue shall be reduced until the sum of the amounts specified in clauses (A) and (B) of the subsection equals the amount determined under clauses (A) and (B) of section 3(f)(1) or until such amount under subsection (b) is reduced to zero, whichever occurs first. If, after such amount under subsection (b) is reduced to zero, the sum of the remaining amounts specified in clauses (A) and (B) of this subsection still exceeds the amount determined under clauses (A) and (B) of section 3(f)(1), the supplemental annuity of the individual first, and then, if necessary, the annuity amount of the individual computed under subsections (b), (c), and (d) of section 3 as of the date on which the individual's annuity under section 2(a)(1) began to accrue, shall be reduced until the amounts specified in clauses (A) and (B) of this subsection equals the amounts determined under clauses (A) and (B) of section 3(f)(1) or until such supplemental annuity and such annuity amount are reduced to zero, whichever occurs first. Notwithstanding the pre-

ceding provisions of this subsection, the provisions of this subsection shall not operate to reduce the total of the amounts specified in clauses (A) and (B) of this subsection below \$1,200.】

* * * * *

(g)(1) * * *

* * * * *

(10)(i) *If for any month the unreduced annuity provided under this section for a widow or widower is less than the widow's or widower's initial minimum amount computed pursuant to paragraph (ii) of this subdivision, the unreduced annuity shall be increased to that initial minimum amount. For the purposes of this subdivision, the unreduced annuity is the annuity without regard to any deduction on account of work, without regard to any reduction for entitlement to an annuity under section 2(a)(1) of this Act, without regard to any reduction for entitlement to a benefit under title II of the Social Security Act, and without regard to any reduction for entitlement to a public service pension pursuant to sections 202(e)(7), 202(f)(2), or section 202(g)(4) of the Social Security Act.*

(ii) *For the purposes of this subdivision, the widow or widower's initial minimum amount is the amount of the unreduced annuity computed at the time an annuity is awarded to that widow or widower, except that—*

(A) *in subsection (g)(1)(i) "100 per centum" shall be substituted for "50 per centum"; and*

(B) *in subsection (g)(2)(ii) "130 per centum" shall be substituted for "80 per centum" both places it appears.*

(iii) *If a widow or widower who was previously entitled to a widow's or widower's annuity under section 2(d)(1)(ii) of this Act becomes entitled to a widow's or widower's annuity under section 2(d)(1)(i) of this Act, a new initial minimum amount shall be computed at the time of award of the widow's or widower's annuity under section 2(d)(1)(i) of this Act.*

* * * * *

ANNUITY BEGINNING AND ENDING DATES

SEC. 5. (a) * * *

* * * * *

(b) An application for any payment under this Act shall be made and filed in such manner and form as the Board may prescribe. 【An application filed with the Board for an annuity under this Act shall, unless the applicant specified otherwise, be deemed to be an application for any benefit to which such applicant may be entitled under this Act or title II of the Social Security Act.】 *An application filed with the Board for an employee annuity, spouse annuity, or divorced spouse annuity on the basis of the employment record of an employee who will have completed less than ten years of service shall be deemed to be an application for any benefit to which such applicant may be entitled under this Act or section 202(a), section 202(b), or section 202(c) of the Social Security Act. An application filed with the Board for an annuity on the basis of the employment record of an employee who will have completed ten years of service shall, unless the applicant specified otherwise, be deemed to be an*

application for any benefit to which such applicant may be entitled under this Act or title II of the Social Security Act. An individual who was entitled to an annuity under paragraph (iv) or (v) of section 2(a)(1) of this Act for the month preceding the month in which he attained retirement age (as defined in section 216(l) of the Social Security Act), shall be deemed to have filed an application for an annuity under paragraph (i) of section 2(a)(1) on the date on which he attained retirement age (as defined in section 216(l) of the Social Security Act), and a widow or widower who was entitled to an annuity under section 2(d)(1) of this Act on the basis of disability for the month preceding the month in which she or he attained age 60, shall be deemed to have filed an application for an annuity under such section 2(d)(1) on the basis of age on the date on which she or he attained age 60.

* * * * *

LUMP-SUM PAYMENTS

SEC. 6. (a) * * *

* * * * *

(e)(1) Every individual who will have completed ten years of service or five or more years of service, all of which accrues after December 31, 1995, at the time of his retirement or death, who will have received compensation in the nature of separation of severance pay on or after January 1, 1985, and who would have been credited with additional months of service pursuant to section 3(i)(4) of this Act except for the fact that such individual was not in an employment relation to one or more employers nor an employee representative in such months, shall, at the time his annuity under section 2(a)(1) of this Act begins to accrue, be entitled to a lump sum in the amount provided under subdivision (2) of this subsection. If the full amount of a lump sum under this subsection cannot be determined at the time an individual's annuity under section 2(a)(1) begins to accrue, such lump sum shall be payable at such time thereafter as such amount can be determined. If an individual otherwise eligible for a lump sum under this section dies before he becomes entitled to an annuity under section 2(a)(1), or before he receives payment of such lump sum, such lump sum shall be payable to the person, if any, who is determined by the Board to be such individual's widow or widower and who will not have died before receiving payment of such lump sum. If there be no such widow or widower, such lump sum shall be payable to the children, grandchildren, parents, brothers and sisters, or the estate of the deceased individual in the same manner as if such lump sum were a lump sum payable under subsection (c)(1) of this section.

* * * * *

POWERS AND DUTIES OF THE BOARD

SEC. 7. (a) * * *

(b)(1) * * *

(2) In the case of—

(A) an individual who will have completed ten years of service or five or more years of service, all of which accrues after December 31, 1995, creditable under this Act,

* * * * *

[(4) The Board shall from time to time certify to the Secretary of the Treasury the name and address of each individual entitled to receive a payment, the amount of such payment, and the time at which it should be made, and the Secretary of the Treasury through the Division of Disbursements of the Treasury Department, and prior to audit by the General Accounting Office, shall make payment in accordance with the certification by the Board.]

(4)(A) *The Railroad Retirement Board, after consultation with the Board of Trustees of the Railroad Retirement Trust and the Secretary of the Treasury, shall enter into an arrangement with a non-governmental financial institution to serve as disbursing agent for benefits payable under this Act who shall disburse consolidated benefits under this Act to each recipient.*

(B) *The Board shall from time to time certify—*

(i) *to the Secretary of the Treasury the amounts required to be transferred from the Social Security Equivalent Benefit Account and the Dual Benefits Payments Account to the disbursing agent to make payments of benefits and the Secretary of the Treasury shall transfer those amounts;*

(ii) *to the Board of Trustees of the Railroad Retirement Investment Trust the amounts required to be transferred from the Railroad Retirement Investment Trust to the disbursing agent to make payments of benefits and the Board of Trustees shall transfer those amounts; and*

(iii) *to the disbursing agent the name and address of each individual entitled to receive a payment, the amount of such payment, and the time at which the payment should be made.*

* * * * *

(c)(1) Benefit payments determined by the Board to be payable under this Act shall be made [from the Railroad Retirement Account] by the disbursing agent under subsection (b)(4) from money transferred to it from the Railroad Retirement Trust Fund or the Social Security Equivalent Benefit Account, as the case may be, except that [payments of supplemental annuities under section 2(b) of this Act shall be made from the Railroad Retirement Supplemental Account, and] payments of annuity amounts made under sections 3(h), 4(e), and 4(h) of this Act and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93-445 shall be made by the disbursing agent under subsection (b)(4) from money transferred to it from the Dual Benefits Payments Account. In any fiscal year, the total amounts paid under such sections shall not exceed the total sums appropriated to the Dual Benefits Payments Account for that fiscal year. The Board shall prescribe regulations for allocation of annuity amounts which would without regard to such regulations be payable under sections 3(h), 4(e), and 4(h) of this Act and sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93-445 so that the sums appropriated to the Dual Benefits Payments Account for a fiscal year so far as practicable, are expended in equal monthly installments throughout such fiscal year, and are distributed so that recipients are paid annuity amounts which bear

the same ratio to the annuity amounts such recipients would have received but for such regulations as the ratio of the total sums appropriated to pay such annuity amounts bear to the total sums necessary to pay such annuity amounts without regard to such regulations. Notwithstanding any other provision of law, the entitlement of an individual to an annuity amount under section 3(h), 4(e), or 4(h) of this Act or section 204(a)(3), 204(a)(4), 206(3), or 207(3) of Public Law 93-445 for any month in which the amount payable to such individual is allocated under the regulations prescribed by the Board under this subsection shall not exceed the amount so allocated for that month to such individual.

* * * * *

RAILROAD RETIREMENT ACCOUNT

SEC. 15. (a) The Railroad Retirement Account established by section 15(a) of the Railroad Retirement Act of 1937 shall continue to be maintained in the Treasury of the United States. There is hereby appropriated to such Account for each fiscal year, beginning with the fiscal year ending June 30, 1975, to provide for the payment of benefits to be made from such Account in accordance with the provisions of section 7(c)(1) of this Act, and to provide for expenses necessary for the Board in the administration of all provisions of this Act, an amount equal to amounts covered into the Treasury (minus refunds) during each fiscal year under the Railroad Retirement Tax Act, except those portions of the amounts covered into the Treasury under sections 3211(b), 3221(c), and 3221(d) of such Tax Act as are necessary to provide sufficient funds to meet the obligation to pay supplemental annuities at the level provided under section 3(e) of this Act and, with respect to those entitled to supplemental annuities under section 205(a) of title II of this Act, at the level provided under section 205(a). The Board is directed to determine what portion of the taxes collected under sections 3211(b), 3221(c), and 3221(d) of the Railroad Retirement Tax Act is to be credited to the Railroad Retirement Account pursuant to the preceding provisions of this subsection and what portion of such taxes is to be credited to the Railroad Retirement Supplemental Account pursuant to the provisions of subsection (c) of this section. The Board shall make such a determination with respect to each calendar quarter commencing with the quarter beginning January 1, 1975, shall make each such determination not later than fifteen days before each calendar quarter, and shall, as soon as practicable after each such determination, advise the Secretary of the Treasury of the determination made. The Secretary of the Treasury shall credit the amounts covered into the Treasury under sections 3211(b), 3221(c), and 3221(d) of the Railroad Retirement Tax Act to the Railroad Retirement Account and the Railroad Retirement Supplemental Account in such proportions as is determined by the Board pursuant to the provisions of this subsection.

* * * * *

[(c) The Railroad Retirement Supplemental Account established by section 15(b) of the Railroad Retirement Act of 1937 shall continue to be maintained in the Treasury of the United States. There is hereby appropriated to such account for each fiscal year, beginning with the fiscal year ending June 30, 1975, out of any moneys

in the Treasury not otherwise appropriated, to provide for the payment of supplemental annuities under section 2(b) of this Act, and to provide for the expenses necessary for the Board in the administration of the payment of such supplemental annuities, an amount equal to such portions of the amounts covered into the Treasury (minus refunds) during each fiscal year under sections 3211(b), 3221(c), and 3221(d) of the Railroad Retirement Tax Act as are not appropriated to the Railroad Retirement Account pursuant to the provisions of subsection (a) of this section. Whenever the Board finds at any time that the balance in the Railroad Retirement Supplemental Account will be insufficient to pay the supplemental annuities which it estimates are due, or will become due, under section 2(b) of this Act, it shall request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the Railroad Retirement Supplemental Account such moneys as the Board estimates would be necessary for the payment of such supplemental annuities, and the Secretary shall make such transfer. Whenever the Board finds that the balance in the Railroad Retirement Supplemental Account, without regard to the amounts transferred pursuant to the next preceding sentence, is sufficient to pay such supplemental annuities, it shall request the Secretary of the Treasury to retransfer from the Railroad Retirement Supplemental Account to the credit of the Railroad Retirement Account such moneys as in its judgment are not needed for the payment of such supplemental annuities, plus interest at an annual rate equal to the average rate of interest borne by all special obligations held by the Railroad Retirement Account on the last day of the preceding fiscal year, rounded to the nearest multiple of one-eighth of 1 per centum, and the Secretary shall make such retransfer.】

(d)(1) There is hereby created an account in the Treasury of the United States to be known as the Dual Benefits Payments Account. There is hereby authorized to be appropriated to such account for each fiscal year beginning with the fiscal year ending September 30, 1982, such sums as are necessary to pay during such fiscal year the amounts of annuities estimated by the Board to be paid under sections 3(h), 4(e), and 4(h) of this Act and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93-445. Not more than 30 days prior to each fiscal year beginning with the fiscal year ending September 30, 1982, the Board may request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the Dual Benefits Payments Account any amount not exceeding the amount that the Board estimates will be necessary to pay on the first day of the next succeeding month the annuity amounts under sections 3(h), 4(e), and 4(h) of this Act and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93-445, taking into account any reduction in such annuity amounts as determined under section 7(c)(1) of this Act, and the Secretary of the Treasury shall make such transfer, but at no time shall the total amount of money outstanding to the Dual Benefits Payments Account from the Railroad Retirement Account exceed the amount necessary to pay the annuity amounts under sections 3(h), 4(e), and 4(h) of this Act and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93-445, taking into account any reduction in such annuity amounts as determined under section 7(c)(1) of this Act, and the Secretary of the Treasury shall make such transfer,

but at no time shall the total amount of money outstanding to the Dual Benefits Payments Account from the Railroad Retirement Account exceed the amount necessary to pay the annuity amounts under sections 3(h), 4(e), and 4(h) of this Act and sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93-445 for one month. Not more than 10 days after the funds appropriated to the Dual Benefits Payments Account for each such fiscal year are received into such Account, the Board shall request the Secretary of the Treasury to retransfer from the Dual Benefits Payments Account to the credit of the Railroad Retirement Account an amount equal to the amount transferred to the Dual Benefits Payments Account prior to or during such fiscal year under the preceding sentence, together with such additional amount determined by the Board to be equal to the loss of interest to the Railroad Retirement Account resulting from such transfer, and the Secretary of the Treasury shall make such retransfer. *The Secretary of the Treasury shall from time to time transfer from the Dual Benefits Payments Account to the disbursing agent under section 7(b)(4) amounts necessary to pay benefits payable from that Account.*

* * * * *

(e) At the request and direction of the Board, it shall be the duty of the Secretary of the Treasury (hereinafter referred to as the "Secretary") to invest such portion of the amounts credited to the Railroad Retirement Account, the Dual Benefits Payments Account and the Railroad Retirement Supplemental Account as, in the judgment of the Board, is not immediately required for the payment of annuities, supplemental annuities, and death benefits. Such investments may be made only *and the Dual Benefits Payments Account as are not transferred to the Railroad Retirement Investment Trust as the Board may determine* in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (A) on original issue at the issue price; or (B) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under *the Second Liberty Bond Act, as amended* chapter 31 of title 31, are hereby extended to authorize the issuance at par of special obligations exclusively to the accounts. Such obligations issued for purchase by the accounts shall have maturities fixed with due regard for the needs of the accounts, and shall bear interest at a rate equal to the average market yield, computed as of the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing notes of the United States then forming a part of the public debt that are not due or callable until after the expiration of three years from the end of such calendar month, except that where such rate is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such rate: *Provided*, That the rate of interest on such obligations shall in no case be less than 3 per centum per annum. At the request of the Board the Secretary shall purchase other interest-bearing obligations of the United States, or obligations guaranteed as to both principal and interest by the United States, or other obligations which are lawful investments for trust funds of the United States, on original issue or at the market price: *Provided*, That the interest

yield of such obligations shall not be less than the interest rate determined in accordance with the preceding sentence. At the request of the Board, the Secretary shall sell at the market price such obligations in the accounts (other than special obligations issued exclusively to the accounts) as the Board designates. The Board shall from time to time request the Secretary to redeem such special obligations issued exclusively to the accounts as the Board designates and upon such request the Secretary shall redeem such obligations at par plus accrued interest. All requests of the Board to the Secretary, provided for in this subsection, shall be mandatory upon the Secretary. It shall be the duty of the Board to determine at all times what proportion of the accounts shall be invested in other than special obligations issued to the accounts and further to determine which of such obligations available to the accounts consistent with [the foregoing requirements] *the requirements of this subsection* will provide the greatest rate of return on the funds invested.

* * * * *

(j) *RAILROAD RETIREMENT INVESTMENT TRUST.*—

(1) *ESTABLISHMENT.*—*The Railroad Retirement Investment Trust (hereinafter in this subsection referred to as the "Trust") is hereby established. The Trust shall manage and invest the assets of the Railroad Retirement Trust Fund (hereinafter in this section referred to as the "Fund", which is hereby established as a trust organized in the District of Columbia and shall, to the extent not inconsistent with this Act, be subject to the laws of the District of Columbia applicable to such trusts.*

(2) *NOT A FEDERAL AGENCY OR INSTRUMENTALITY.*—*The Trust is not a department, agency, or instrumentality of the Government of the United States and shall not be subject to title 31, United States Code.*

(3) *BOARD OF TRUSTEES.*—

(A) *GENERALLY.*—*The Trust shall have a Board of Trustees, consisting of 7 members, each appointed by a unanimous vote of the Railroad Retirement Board. The Railroad Retirement Board may remove any member so appointed by unanimous vote. Of the 7 members, 3 shall represent the interests of labor, 3 shall represent the interests of management, and 1 shall represent the interests of the general public. The members of the Board of Trustees shall not be considered officers or employees of the Government of the United States.*

(B) *QUALIFICATIONS.*—*Members of the Board of Trustees shall be appointed only from among persons who have experience and expertise in the management of financial investments and pension plans. No member of the Railroad Retirement Board shall be eligible to be a member of the Board of Trustees.*

(C) *TERMS.*—*Except as provided in this subparagraph, each member shall be appointed for a 3-year term. The initial members appointed under this paragraph shall be divided into 3 equal groups so nearly as may be, of which one group will be appointed for a 1-year term, one for a 2-year term, and one for a 3-year term. A vacancy in the Board of Trustees shall not affect the powers of the Board of*

Trustees and shall be filled in the same manner as the selection of the member whose departure caused the vacancy. Upon the expiration of a term of a member of the Board of Trustees, that member shall continue to serve until a successor is appointed.

(4) *POWERS OF THE BOARD OF TRUSTEES.—The Board of Trustees shall—*

(A) retain independent advisers to assist it in the formulation and adoption of its investment guidelines;

(B) retain independent investment managers to invest the assets of the Fund in a manner consistent with such investment guidelines;

(C) invest assets in the Fund, pursuant to the policies adopted in subparagraph (A);

(D) pay administrative expenses of the Fund and the Trust from the money in the Fund; and

(E) transfer money to the disbursing agent to pay benefits payable under this Act from money in the Fund and administrative expenses related to those benefits.

(5) *REPORTING REQUIREMENTS AND FIDUCIARY STANDARDS.—The following reporting requirements and fiduciary standards shall apply with respect to the Railroad Retirement Trust and the Railroad Retirement Trust Fund (and the assets held in such Trust Fund):*

(A) DUTIES OF THE BOARD OF TRUSTEES.—The Railroad Retirement Trust and each member of the Board of Trustees shall discharge their duties with respect to the assets of the Fund solely in the interest of the Railroad Retirement Board and through it, the participants and beneficiaries of the programs funded under this Act—

(i) for the exclusive purpose of—

(I) providing benefits to participants and their beneficiaries; and

(II) defraying reasonable expenses of administering the functions of the Trust;

(ii) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(iii) by diversifying investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(iv) in accordance with Trust governing documents and instruments insofar as such documents and instruments are consistent with this Act.

(B) PROHIBITIONS WITH RESPECT TO MEMBERS OF THE BOARD OF TRUSTEES.—No member of the Board of Trustees shall—

(i) deal with the assets of the Fund in the trustee's own interest or for the trustee's own account;

(ii) in an individual or in any other capacity act in any transaction involving the assets of the Fund on behalf of a party (or represent a party) whose interests are adverse to the interests of the Trust, the Fund, the

Railroad Retirement Board, or the interests of participants or beneficiaries; or

(iii) receive any consideration for the trustee's own personal account from any party dealing with the assets of the Fund.

(C) EXCULPATORY PROVISIONS AND INSURANCE.—*Any provision in an agreement or instrument that purports to relieve a trustee from responsibility or liability for any responsibility, obligation or duty under this Act shall be void: Provided, however, That nothing shall preclude—*

(i) the Trust from purchasing insurance for its trustees or for itself to cover liability or losses occurring by reason of the act or omission of a trustee, if such insurance permits recourse by the insurer against the trustee in the case of a breach of a fiduciary obligation by such trustee;

(ii) a trustee from purchasing insurance to cover liability under this section from and for his own account; or

(iii) an employer or an employee organization from purchasing insurance to cover potential liability of one or more trustees with respect to their fiduciary responsibilities, obligations, and duties under this section.

“(D) BONDING.—*Every trustee and every person who handles funds or other property of the Fund (hereafter in this subsection referred to as ‘Trust official’) shall be bonded. Such bonds shall provide protection to the Fund against loss by reason of acts of fraud or dishonesty on the part of any Trust official, directly or through the connivance of others, and shall be in accordance with the following:*

(i) The amount of such bond shall be fixed at the beginning of each fiscal year of the Trust by the Railroad Retirement Board. Such amount shall not be less than 10 percent of the amount of the funds handled. In no case shall such bond be less than \$1,000 nor more than \$500,000, except that the Railroad Retirement Board, after consideration of the record, may prescribe an amount in excess of \$500,000, subject to the 10 per centum limitation of the preceding sentence.

(ii) It shall be unlawful for any Trust official to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of the Fund without being bonded as required by this subsection and it shall be unlawful for any Trust official, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any Trust official, with respect to whom the requirements this subsection have not been met.

(iii) It shall be unlawful for any person to procure any bond required by this subsection from any surety or other company or through any agent or broker in whose business operations such person has any control or significant financial interest, direct or indirect.

(E) AUDIT AND REPORT.—

(i) *The Trust shall annually engage an independent qualified public accountant to audit the financial statements of the Fund.*

(ii) *The Trust shall submit an annual management report to the Congress not later than 180 days after the end of the Trust's fiscal year. A management report under this subsection shall include—*

(I) a statement of financial position;

(II) a statement of operations;

(III) a statement of cash flows;

(IV) a statement on internal accounting and administrative control systems;

(V) the report resulting from an audit of the financial statements of the Trust conducted under subparagraph (E)(i); and

(VI) any other comments and information necessary to inform the Congress about the operations and financial condition of the Trust and the Fund.

(iii) *The Trust shall provide the President, the Railroad Retirement Board, and the Director of the Office of Management and Budget a copy of the management report when it is submitted to Congress.*

(F) *ENFORCEMENT.—The Railroad Retirement Board may bring a civil action—*

(i) to enjoin any act or practice by the Railroad Retirement Investment Trust, its Board of Trustees or its employees or agents that violates any provision of this Act; or

(ii) to obtain other appropriate relief to redress such violations, or to enforce any provisions of this Act.

(6) *RULES AND ADMINISTRATIVE POWERS.—The Board of Trustees shall have the authority to make rules to govern its operations, employ professional staff, and contract with outside advisers to provide legal, accounting, investment advisory or other services necessary for the proper administration of this subsection. In the case of contracts with investment advisory services, compensation for such services may be on a fixed contract fee basis or on such other terms and conditions as are customary for such services.*

(7) *QUORUM.—Five members of the Board of Trustees constitute a quorum to do business. Investment guidelines must be adopted by a unanimous vote of the entire Board of Trustees. All other decisions of the Board of Trustees shall be decided by a majority vote of the quorum present. All decisions of the Board of Trustees shall be entered upon the records of the Board of Trustees.*

(k) *TRANSFERS TO THE FUND.—The Board shall, upon establishment of the Railroad Retirement Trust Fund and from time to time thereafter, direct the Secretary of the Treasury to transfer, in such manner as will maximize the investment returns to the Railroad Retirement system, that portion of the Railroad Retirement Account that is not needed to pay current administrative expenses of the Board to the Railroad Retirement Trust Fund. The Secretary shall make that transfer.*

(l) RAILROAD RETIREMENT TRUST FUND.—The Railroad Retirement Trust shall from time to time transfer to the disbursing agent described in section 7(b)(4) such amounts as may be necessary to pay benefits under this Act (other than benefits paid from the Social Security Equivalent Benefit Account or the Dual Benefit Payments Account).

SOCIAL SECURITY EQUIVALENT BENEFIT ACCOUNT

SEC. 15A. (a) * * *

* * * * *

(c)(1) Except as otherwise provided in this section, amounts in the Social Security Equivalent Benefit Account shall be available only for purposes of paying social security equivalent benefits under this Act and to provide for the administrative expenses of the Board allocable to social security equivalent benefits. *The Secretary shall from time to time transfer to the disbursing agent under section 7(b)(4) amounts necessary to pay those benefits.*

* * * * *

(d)(1) Whenever the Board finds that the balance in the Social Security Equivalent Benefit Account will be insufficient to pay social security equivalent benefits which it estimates are due in any month, it shall request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the Social Security Equivalent Benefit Account such moneys as the Board estimates will be necessary for the payment of such benefits, and the Secretary shall make such transfer. **【**Whenever later in such month there is a transfer to the Social Security Equivalent Benefit Account under paragraph (2) or (4) of section 7(c) of this Act, the amount so transferred shall be immediately retransferred to the Railroad Retirement Account. The amount retransferred under the preceding sentence shall not exceed the amount of any outstanding transfers under this paragraph from the Railroad Retirement Account plus such additional amounts determined by the Board to be equal to the loss of interest to the Railroad Retirement Account resulting from such outstanding transfers.

【(2) Whenever the Board determines that—

【(A) amounts in the Railroad Retirement Account will not be sufficient to pay the annuities which it estimates are due, or will become due, from such Account, and

【(B) the transfer under this paragraph will not jeopardize the present or future payment of social security equivalent benefits,

the Board shall request the Secretary of the Treasury to transfer from the Social Security Equivalent Benefit Account to the Railroad Retirement Account such moneys as the Board estimates will be necessary for the payment of such annuities, and the Secretary shall make such transfer. No transfer under this paragraph shall be required to be repaid.**】**

(2) Upon establishment of the Railroad Retirement Trust Fund and from time to time thereafter, the Board shall direct the Secretary of the Treasury to transfer, in such manner as will maximize the investment returns to the Railroad Retirement system, the balance of the Social Security Equivalent Benefit Account not needed to pay current benefits required to be paid from that Account to the

Railroad Retirement Trust Fund, and the Secretary shall make that transfer. Any balance transferred under this paragraph shall be used by the Railroad Retirement Trust only to pay benefits under this Act or to purchase obligations of the United States that are backed by the full faith and credit of the United States pursuant to chapter 31 of title 31, United States Code. The proceeds of sales of, and the interest income from, such obligations shall be used by the Trust only to pay benefits under this Act.

* * * * *

CREDITING SERVICE UNDER THE SOCIAL SECURITY ACT

SEC. 18. (1) Except as provided in subdivision (2), the term "employment" as defined in section 210 of the Social Security Act shall not include service performed by an individual as an employee as defined in section 1(b) of this Act.

(2) For the purpose of determining (i) monthly insurance benefits under the Social Security Act to an employee who will have completed less than ten years of service *or less than five years of service, all of which accrues after December 31, 1995*, and to others deriving from him or her during his or her life and (ii) monthly insurance benefits and lump-sum death benefits under such Act with respect to the death of an employee who (A) will have completed less than ten years of service *or less than five years of service, all of which accrues after December 31, 1995*, or (B) will have completed ten or more years of service *or five or more years of service, all of which accrues after December 31, 1995*, but will not have had a current connection with the railroad industry at the time of his death, and for the purposes of section 203 and section 216(i) of that Act, section 210(a)(9) of the Social Security Act and subdivision (1) of this section shall not operate to exclude from "employment" under the Social Security Act service which would otherwise be included in such "employment" but for such sections. For such purpose, compensation paid in a calendar year shall, 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 service as an employee. In the application of the Social Security Act pursuant to this subdivision to service as an employee, all service as defined in section 1(d) of this Act shall be deemed to have been performed within the United States.

AUTOMATIC BENEFIT ELIGIBILITY REQUIREMENT ADJUSTMENTS

SEC. 19. (a) * * *

* * * * *

(c) If section 226 or title XVII of the Social Security Act is amended at any time after December 31, 1974, to reduce the conditions of entitlement to, or to expand the nature of, the benefits payable thereunder, or if health care benefits in addition to, or in lieu of, the benefits payable under such section 226 or such title XVIII are provided by any provision of law which becomes effective at any time after December 31, 1974, such reductions in the conditions of entitlement to benefits, such expanded benefits, or such additional, or substituted, health care benefits shall be available to every employee (as defined in this Act), and those deriving from him, in the

same manner, and to the same, extent, as if his service as an employee after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act. The Board shall have the same authority, in accordance with regulations prescribed by it, to determine the rights of employees who will have completed ten years of service *or five or more years of service, all of which accrues after December 31, 1995*, and of those deriving from such employees, to benefits provided by reason of the provisions of this subsection as the Secretary of Health, Education, and Welfare has with respect to individuals insured under the Social Security Act.

(d) Notwithstanding the provisions of subsections (a), (b), and (c) of this section—

(1) * * *

(2) No annuity shall be payable to a person by reason of subsection (a) or (b) of this section unless the individual upon whose compensation and years of service such annuity would be based will have (A) completed ten years of service *or five or more years of service, all of which accrues after December 31, 1995*, and (B) in the case of a survivor, had a current connection with the railroad industry at the time of his death.

* * * * *

BENEFIT PRESERVATION

SEC. 22. (a)(1) On or before May 1 of each year beginning in 1984, the Railroad Retirement Board shall prepare a five-year projection of anticipated revenues to and payments from the Railroad Retirement Account to determine the ability of such Account to pay benefits in each of the next succeeding five calendar years. *On or before May 1 of each year beginning in 2002, the Railroad Retirement Board shall compute its projection of the account benefits ratio and the average account benefits ratio (as defined by section 3241(c) of the Internal Revenue Code of 1986) for each of the next succeeding five fiscal years.* No later than July 1 of each year, the Board shall submit a written report to the President, the Speaker of the House, and the President of the Senate setting forth the results of **the projection prepared pursuant to the preceding sentence** *the projections prepared pursuant to the preceding two sentences.* If the projection indicates that the funds in the Railroad Retirement Account will be insufficient to pay the full amount of the benefits under this Act which are payable from that Account at any time during the five-year period, the Board's report shall include—

(A) * * *

* * * * *

COMPUTATION AND CERTIFICATION OF ACCOUNT BENEFIT RATIOS

SEC. 23. (a) *On or before November 1, 2002, the Railroad Retirement Board shall—*

- (1) *compute the account benefits ratios for each of the most recent 10 preceding fiscal years, and*
- (2) *certify the account benefits ratios for each such fiscal year to the Secretary.*

(b) *On or before November 1 of each year after 2002, the Railroad Retirement Board shall—*

(1) compute the account benefits ratio for the fiscal year ending in such year, and

(2) certify the account benefits ratio for such fiscal year to the Secretary.

(c) *DEFINITION.—As used in this section, the term “account benefit ratio” has the meaning given that term in section 3241(c) of the Internal Revenue Code of 1986.*

SECTION 205 OF THE SOCIAL SECURITY ACT

EVIDENCE, PROCEDURE, AND CERTIFICATION FOR PAYMENT

SEC. 205. (a) * * *

* * * * *

(i) Upon final decision of the Commissioner of Social Security, or upon final judgment of any court of competent jurisdiction, that any person is entitled to any payment or payments under this title, the Commissioner of Social Security shall certify to the Managing Trustee the name and address of the person so entitled to receive such payment or payments, the amount of such payment or payments, and the time at which such payment or payments should be made, and the Managing Trustee, through the Fiscal Service of the Department of the Treasury, and prior to any action thereon by the General Accounting Office, shall make payment in accordance with the certification of the Commissioner of Social Security (except that in the case of (A) an individual who will have completed ten years of service or five or more years of service, all of which accrues after December 31, 1995, creditable under the Railroad Retirement Act of 1937 or the Railroad Retirement Act of 1974, (B) the wife or husband of such an individual, (C) any survivor of such an individual if such survivor is entitled, or could upon application become entitled, to an annuity under section 2 of the Railroad Retirement Act of 1974, and (D) any other person entitled to benefits under section 202 of this Act on the basis of the wages and self-employment income of such an individual (except a survivor of such an individual where such individual did not have a current connection with the railroad industry, as defined in the Railroad Retirement Act of 1974, at the time of his death), such certification shall be made to the Railroad Retirement Board which shall provide for such payment or payments to such person on behalf of the Managing Trustee in accordance with the provisions of the Railroad Retirement Act of 1974): *Provided*, That where a review of the Commissioner’s decision is or may be sought under subsection (g) the Commissioner of Social Security may withhold certification of payment pending such review. The Managing Trustee shall not be held personally liable for any payment or payments made in accordance with a certification by the Commissioner of Social Security.

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INTERNAL REVENUE CODE OF 1986

Subtitle A—Income Taxes

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter A—Determination of Tax Liability

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PART IV—CREDITS AGAINST TAX

* * * * *

Subpart A—Nonrefundable Personal Credits

* * * * *

SEC. 24. CHILD TAX CREDIT.

(a) * * *

* * * * *

(d) **ADDITIONAL CREDIT FOR FAMILIES WITH 3 OR MORE CHILDREN.**—

(1) * * *

* * * * *

(3) **SOCIAL SECURITY TAXES.**—For purposes of paragraph (1)—
 (A) **IN GENERAL.**—The term “social security taxes” means, with respect to any taxpayer for any taxable year—

(i) * * *

* * * * *

(iii) 50 percent of the taxes imposed by [section 3211(a)(1)] *section 3211(a)* on amounts received by the taxpayer during the calendar year in which the taxable year begins.

* * * * *

Subchapter B—Computation of Taxable Income

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PART II—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

* * * * *

SEC. 72. ANNUITIES; CERTAIN PROCEEDS OF ENDOWMENT AND LIFE INSURANCE CONTRACTS.

(a) * * *

* * * * *

(r) **CERTAIN RAILROAD RETIREMENT BENEFITS TREATED AS RECEIVED UNDER EMPLOYER PLANS.**—

(1) * * *

(2) TIER 2 TAXES TREATED AS CONTRIBUTIONS.—

(A) * * *

* * * * *

(B) TIER 2 PORTION.—For purposes of subparagraph (A)—

(i) AFTER 1984.—With respect to compensation paid after 1984, the tier 2 portion shall be the taxes imposed by sections 3201(b), [3211(a)(2)] section 3211(b), and 3221(b).

* * * * *

Subchapter F—Exempt Organizations

* * * * *

PART I—GENERAL RULE

* * * * *

SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

(a) * * *

* * * * *

(c) LIST OF EXEMPT ORGANIZATIONS.—The following organizations are referred to in subsection (a):

(1) * * *

* * * * *

(28) *The Railroad Retirement Investment Trust established under section 15(j) of the Railroad Retirement Act of 1974.*

* * * * *

Subtitle C—Employment Taxes

* * * * *

CHAPTER 22—RAILROAD RETIREMENT TAX ACT

* * * * *

Subchapter E. Tier 2 tax rate determination.

* * * * *

Subchapter A—Tax on Employees

* * * * *

SEC. 3201. RATE OF TAX.

(a) * * *

[(b) TIER 2 TAX.—In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to 4.90 percent of the compensation received during any calendar year by such employee for services rendered by such employee.]

(b) *TIER 2 TAX.*—

(1) *IN GENERAL.*—*In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the applicable percentage of the compensation received during any calendar year by such employee for services rendered by such employee.*

(2) *APPLICABLE PERCENTAGE.*—*For purposes of paragraph (1), the term “applicable percentage” means—*

(A) *4.90 percent in the case of compensation received during 2001 or 2002, and*

(B) *in the case of compensation received during any calendar year after 2002, the percentage determined under section 3241 for such calendar year.*

* * * * *

Subchapter B—Tax on Employee Representatives

* * * * *

SEC. 3211. RATE OF TAX.

[(a) IMPOSITION OF TAXES.—

[(1) TIER 1 TAX.—*In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the applicable percentage of the compensation received during any calendar year by such employee representative for services rendered by such employee representative. For purposes of the preceding sentence, the term “applicable percentage” means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3101 and subsections (a) and (b) of section 3111 for the calendar year.*

[(2) TIER 2 TAX.—*In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the following percentage of the compensation received during any calendar year by such employee representatives for services rendered by such employee representative:*

[In the case of compensation received during:	The rate shall be:
1985	13.75
1986 or thereafter	14.75

[(3) CROSS REFERENCE.—*For application of different contribution bases with respect to the taxes imposed by paragraphs (1) and (2), see section 3231(e)(2).*

[(b) In addition to other taxes, there is hereby imposed on the income of each employee representative a tax at a rate equal to the rate of excise tax imposed on every employer, provided for in section 3221(c), for each man-hour for which compensation is paid to him for services rendered as an employee representative.]

(a) TIER 1 TAX.—*In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the applicable percentage of the compensation received during any calendar year by such employee representative for services rendered by such employee representative. For purposes of the preceding sentence, the term “applicable percentage” means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b)*

of section 3101 and subsections (a) and (b) of section 3111 for the calendar year.

(b) **TIER 2 TAX.**—

(1) **IN GENERAL.**—*In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the applicable percentage of the compensation received during any calendar year by such employee representatives for services rendered by such employee representative.*

(2) **APPLICABLE PERCENTAGE.**—*For purposes of paragraph (1), the term “applicable percentage” means—*

(A) *14.75 percent in the case of compensation received during 2001,*

(B) *14.20 percent in the case of compensation received during 2002, and*

(C) *in the case of compensation received during any calendar year after 2002, the percentage determined under section 3241 for such calendar year.*

(c) **CROSS REFERENCE.**—

For application of different contribution bases with respect to the taxes imposed by subsections (a) and (b), see section 3231(e)(2).

* * * * *

Subchapter C—Tax on Employers

* * * * *

SEC. 3221. RATE OF TAX.

(a) * * *

[(b) **TIER 2 TAX.**—*In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 16.10 percent of the compensation paid during any calendar year by such employer for services rendered to such employer.*

[(c) *In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, for each man-hour for which compensation is paid by such employer for services rendered to him during any calendar quarter, at such rate as will make available sufficient funds to meet the obligation to pay supplemental annuities at the level provided under section 3(j) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974 and administrative expenses in connection therewith. For the purpose of this subsection, the Railroad Retirement Board is directed to determine what rate is required for each calendar quarter. The Railroad Retirement Board shall make the determinations provided for not later than fifteen days before each calendar quarter. As soon as practicable after each determination of the rate, as provided in this subsection, the Railroad Retirement Board shall publish a notice in the Federal Register, and shall advise all employers, employee representatives, and the Secretary, of the rate so determined. With respect to daily, weekly, or monthly rates of compensation such tax shall apply to the number of hours comprehended in the rate together with the number of overtime hours for which compensation in addition to the daily, weekly, or monthly rate is paid. With respect to compensation paid on a mileage or piecework basis such tax shall apply to the number of hours*

constituting the hourly equivalent of the compensation paid. Each employer of employees whose supplemental annuities are reduced pursuant to section 3(j)(2) of the Railroad Retirement Act of 1937 or section 2(h)(2) of the Railroad Retirement Act of 1974 shall be allowed as a credit against the tax imposed by this subsection an amount equivalent in each month to the aggregate amount of reductions in supplemental annuities accruing in such month to employees of such employer. If the credit so allowed to such an employer for any month exceeds the tax liability of such employer accruing under this subsection in such month, the excess may be carried forward for credit against such taxes accruing in subsequent months but the total credit allowed by this paragraph to an employer shall not exceed the total of the taxes on such employer imposed by this subsection. At the end of each calendar quarter the Railroad Retirement Board shall certify to the Secretary with respect to each such employer the amount of credit accruing to such employer under this paragraph during such quarter and shall notify such employer as to the amount so certified.

[(d) Notwithstanding the provisions of subsection (c) of this section, the tax imposed by such subsection (c) shall not apply to an employer with respect to employees who are covered by a supplemental pension plan which is established pursuant to an agreement reached through collective bargaining between the employer and employees. There is hereby imposed on every such employer an excise tax equal to the amount of the supplemental annuity paid to each such employee under section 2(b) of the Railroad Retirement Act of 1974, plus a percentage thereof determined by the Railroad Retirement Board to be sufficient to cover the administrative costs attributable to such payments under section 2(b) of such Act.]

(b) TIER 2 TAX.—

(1) IN GENERAL.—*In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the applicable percentage of the compensation paid during any calendar year by such employer for services rendered to such employer.*

(2) APPLICABLE PERCENTAGE.—*For purposes of paragraph (1), the term “applicable percentage” means—*

(A) *15.6 percent in the case of compensation paid during 2001,*

(B) *14.2 percent in the case of compensation paid during 2002, and*

(C) *in the case of compensation paid during any calendar year after 2002, the percentage determined under section 3241 for such calendar year.*

* * * * *

Subchapter D—General Provisions

* * * * *

SEC. 3231. DEFINITIONS.

(a) * * *

* * * * *

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

(1) * * *

(2) APPLICATION OF CONTRIBUTION BASES.—

(A) COMPENSATION IN EXCESS OF APPLICABLE BASE EXCLUDED.—

(i) * * *

* * * * *

(iii) HOSPITAL INSURANCE TAXES.—Clause (i) shall not apply to—

(I) so much of the rate applicable under section 3201(a) or 3221(a) as does not exceed the rate of tax in effect under section 3101(b), and

(II) so much of the rate applicable under section **[3211(a)(1)] 3211(a)** as does not exceed the rate of tax in effect under section 1401(b).

* * * * *

(B) APPLICABLE BASE.—

(i) * * *

(ii) TIER 2 TAXES, ETC.—For purposes of—

(I) the taxes imposed by sections 3201(b), **[3211(a)(2)] 3211(b)**, and 3221(b), and

* * * * *

(4)(A) For purposes of applying sections 3201(a), **[3211(a)(1)] 3211(a)**, and 3221(a), in the case of payments made to an employee or any of his dependents on account of sickness or accident disability, clause (i) of the second sentence of paragraph (1) shall exclude from the term “compensation” only—

(i) payments which are received under a workmen’s compensation law, and

(ii) benefits received under the Railroad Retirement Act of 1974.

* * * * *

Subchapter E—Tier 2 Tax Rate Determination

Sec. 3241. Determination of tier 2 tax rate based on average account benefits ratio.

SEC. 3241. DETERMINATION OF TIER 2 TAX RATE BASED ON AVERAGE ACCOUNT BENEFITS RATIO.

(a) *IN GENERAL.*—For purposes of sections 3201(b), 3211(b), and 3221(b), the applicable percentage for any calendar year is the percentage determined in accordance with the table in subsection (b).

(b) *TAX RATE SCHEDULE.*—

Average account benefits ratio		Applicable percentage for sections 3211(b) and 3221(b)	Applicable percentage for section 3201(b)
At least	But less than		
	2.5	22.1	4.9
2.5	3.0	18.1	4.9
3.0	3.5	15.1	4.9
3.5	4.0	14.1	4.9
4.0	6.1	13.1	4.9
6.1	6.5	12.6	4.4
6.5	7.0	12.1	3.9

Average account benefits ratio		Applicable percentage for sections 3211(b) and 3221(b)	Applicable percentage for section 3201(b)
At least	But less than		
7.0	7.5	11.6	3.4
7.5	8.0	11.1	2.9
8.0	8.5	10.1	1.9
8.5	9.0	9.1	0.9
9.0		8.2	0

(c) *DEFINITIONS RELATED TO DETERMINATION OF RATES OF TAX.*—

(1) *AVERAGE ACCOUNT BENEFITS RATIO.*—For purposes of this section, the term “average account benefits ratio” means, with respect to any calendar year, the average determined by the Secretary of the account benefits ratios for the 10 most recent fiscal years ending before such calendar year. If the amount determined under the preceding sentence is not a multiple of 0.1, such amount shall be increased to the next highest multiple of 0.1.

(2) *ACCOUNT BENEFITS RATIO.*—For purposes of this section, the term “account benefits ratio” means, with respect to any fiscal year, the amount determined by the Railroad Retirement Board by dividing the fair market value of the assets in the Railroad Retirement Account and of the Railroad Retirement Investment Trust (and for the years before 2001, the Social Security Equivalent Benefits Account) as of the close of such fiscal year by the total benefits and administrative expenses paid from the Railroad Retirement Account and the Railroad Retirement Investment Trust during such fiscal year.

(d) *NOTICE.*—No later than December 1 of each calendar year, the Secretary shall publish a notice in the Federal Register of the rates of tax determined under this section which are applicable for the following calendar year.

* * * * *

Subtitle D—Miscellaneous Excise Taxes

* * * * *

CHAPTER 31—RETAIL EXCISE TAXES

* * * * *

Subchapter B—Special Fuels

* * * * *

SEC. 4041. IMPOSITION OF TAX.

(a) *DIESEL FUEL AND SPECIAL MOTOR FUELS.*—

(1) *TAX ON DIESEL FUEL IN CERTAIN CASES.*—

(A) *IN GENERAL.*—There is hereby imposed a tax on any liquid other than gasoline (as defined in section 4083)—

(i) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle, [or a

diesel-powered train] for use as a fuel in such vehicle [or train], or

(ii) used by any person as a fuel in a diesel-powered highway vehicle, [or a diesel-powered train] unless there was a taxable sale of such fuel under clause (i).

* * * * *

(C) RATE OF TAX.—

(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the rate of the tax imposed by this paragraph shall be the rate of tax specified in section 4081(a)(2)(A) on diesel fuel which is in effect at the time of such sale or use.

[(ii) RATE OF TAX ON TRAINS.—In the case of any sale for use, or use, of diesel fuel in a train, the rate of tax imposed by this paragraph shall be—

[(I) 6.8 cents per gallon after September 30, 1993, and before October 1, 1995,

[(II) 5.55 cents per gallon after September 30, 1995, and before November 1, 1998, and

[(III) 4.3 cents per gallon after October 31, 1998.]

[(iii) (ii) RATE OF TAX ON CERTAIN BUSES.—

(I) IN GENERAL.—Except as provided in subclause (II), in the case of fuel sold for use or used in a use described in section 6427(b)(1) (after the application of section 6427(b)(3)), the rate of tax imposed by this paragraph shall be 7.3 cents per gallon (4.3 cents per gallon after September 30, 2005).

(II) SCHOOL BUS AND INTRACITY TRANSPORTATION.—No tax shall be imposed by this paragraph on any sale for use, or use, described in subparagraph (B) or (C) of section 6427(b)(2).

(b) EXEMPTION FOR OFF-HIGHWAY BUSINESS USE; REDUCTION IN TAX FOR QUALIFIED METHANOL AND ETHANOL FUEL.—

(1) EXEMPTION FOR OFF-HIGHWAY BUSINESS USE.—

(A) * * *

* * * * *

(C) OFF-HIGHWAY BUSINESS USE DEFINED.—For purposes of this subsection, the term “off-highway business use” has the meaning given to such term by section 6421(e)(2); except that such term shall not, for purposes of subsection (a)(1), include use in a diesel-powered train].

* * * * *

(d) ADDITIONAL TAXES TO FUND LEAKING UNDERGROUND STORAGE TANK TRUST FUND.—

(1) * * *

* * * * *

(3) DIESEL FUEL USED IN TRAINS.—There is hereby imposed a tax of 0.1 cent per gallon on any liquid other than gasoline (as defined in section 4083)—

(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such fuel under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081.

[(3)] (4) TERMINATION.—The taxes imposed by this subsection shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply.

* * * * *

SEC. 4042. TAX ON FUEL USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.

(a) * * *

(b) AMOUNT OF TAX.—

(1) IN GENERAL.—The rate of the tax imposed by subsection

(a) is the sum of—

(A) the Inland Waterways Trust Fund financing rate, and

(B) the Leaking Underground Storage Tank Trust Fund financing rate[, and].

[(C) the deficit reduction rate.]

(2) RATES.—For purposes of paragraph (1)—

(A) * * *

* * * * *

[(C) The deficit reduction rate is 4.3 cents per gallon.]

* * * * *

CHAPTER 32—MANUFACTURERS EXCISE TAXES

* * * * *

PART III—PETROLEUM PRODUCTS

* * * * *

Subpart A—Gasoline and Diesel Fuel

* * * * *

SEC. 4082. EXEMPTIONS FOR DIESEL FUEL AND KEROSENE.

(a) * * *

* * * * *

(f) CROSS REFERENCE.—

For tax on train and certain bus uses of fuel purchased tax-free, see section [4041(a)(1)] subsections (d)(3) and (a)(1) of section 4041, respectively.

* * * * *

SEC. 4083. DEFINITIONS; SPECIAL RULE; ADMINISTRATIVE AUTHORITY.

(a) TAXABLE FUEL.—For purposes of this subpart—

(1) * * *

* * * * *

(3) DIESEL FUEL.—The term “diesel fuel” means any liquid (other than gasoline) which is suitable for use as a fuel in a diesel-powered highway vehicle [or a diesel-powered train].

* * * * *

Subtitle F—Procedure and Administration

* * * * *

CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

* * * * *

Subchapter B—Rules for Special Application

* * * * *

SEC. 6421. GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES, USED BY LOCAL TRANSIT SYSTEMS, OR SOLD FOR CERTAIN EXEMPT PURPOSES.

(a) * * *

* * * * *

(f) EXEMPT SALES; OTHER PAYMENTS OR REFUNDS AVAILABLE.—

* * *

* * * * *

[(3) GASOLINE USED IN TRAINS.—In the case of gasoline used as a fuel in a train, this section shall not apply with respect to—

[(A) the Leaking Underground Storage Tank Trust Fund financing rate under section 4081, and

[(B) so much of the rate specified in section 4081(a)(2)(A) as does not exceed—

[(i) 6.8 cents per gallon after September 30, 1993, and before October 1, 1995,

[(ii) 5.55 cents per gallon after September 30, 1995, and before November 1, 1998, and

[(iii) 4.3 cents per gallon after October 31, 1998.]

(3) GASOLINE USED IN TRAINS.—In the case of gasoline used as a fuel in a train, this section shall not apply with respect to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081.

* * * * *

SEC. 6427. FUELS NOT USED FOR TAXABLE PURPOSES.

(a) * * *

* * * * *

(1) NONTAXABLE USES OF DIESEL FUEL, KEROSENE, AND AVIATION FUEL.—

(1) * * *

* * * * *

[(3) REFUND OF CERTAIN TAXES ON FUEL USED IN DIESEL-POWERED TRAINS.—For purposes of this subsection, the term “nontaxable use” includes fuel used in a diesel-powered train. The preceding sentence shall not apply with respect to—

[(A) the Leaking Underground Storage Tank Trust Fund financing rate under sections 4041 and 4081, and

[(B) so much of the rate specified in section 4081(a)(2)(A) as does not exceed—

[(i) 6.8 cents per gallon after September 30, 1993, and before October 1, 1995,

[(ii) 5.55 cents per gallon after September 30, 1995, and before November 1, 1998, and

[(iii) 4.3 cents per gallon after October 31, 1998.

The preceding sentence shall not apply in the case of fuel sold for exclusive use by a State or any political subdivision thereof.]

(3) REFUND OF CERTAIN TAXES ON FUEL USED IN DIESEL-POWERED TRAINS.—For purposes of this subsection, the term “nontaxable use” includes fuel used in a diesel-powered train. The preceding sentence shall not apply to the tax imposed by section 4041(d) and the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 except with respect to fuel sold for exclusive use by a State or any political subdivision thereof.

* * * * *

