

ticular period shall be taken as conclusive that no compensation was paid to such employee during that period, unless the error in the amount of compensation returned in the one case, or the failure to make return of the compensation in the other case, is called to the attention of the Board within four years after the day on which return of the compensation was required to be made.

(Aug. 29, 1935, ch. 812, §9, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93-445, title I, §101, Oct. 16, 1974, 88 Stat. 1343.)

### § 231i. Erroneous payments

#### (a) Recovery

If the Board finds that at any time more than the correct amount of annuities or other benefits has been paid to any individual under this subchapter, or payment has been made to an individual not entitled thereto, recovery by adjustment in subsequent payments to which such individual, or any other individual on the basis of the same compensation, wages, or self-employment income, is entitled under this subchapter, or the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.] may, except as otherwise provided in this section, be made under regulations prescribed by the Board. If the individual to whom more than the correct amount has been paid dies before recovery is completed, recovery may be made by setoff or adjustments, under regulations prescribed by the Board, in subsequent payments due, under this subchapter, or the Railroad Unemployment Insurance Act, to the estate of such individual or to any person on the basis of the compensation, wages, or self-employment income of such individual. The Board shall have the authority to recover from any payment which would be made to an individual by the Board under section 231f(b)(2) of this title the amount of annuity payments made to such individual which are erroneous because of such individual's entitlement to monthly insurance benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.].

#### (b) Adjustments

Adjustments under this section may be made either by deductions from subsequent payments or, with respect to payments which are to be made during a lifetime or lifetimes, by subtracting the total amount of annuities or other benefits paid in excess of the proper amount from the actuarial value, as determined by the Board, of such payments to be made during a lifetime or lifetimes and recertifying such payments on the basis of the reduced actuarial value. In the latter case, recovery shall be deemed to have been completed upon such recertification.

#### (c) Decision not to recover

There shall be no recovery in any case in which more than the correct amount of annuities or other benefits has been paid under this subchapter to an individual or payment has been made to an individual not entitled thereto who, in the judgment of the Board, is without fault when, in the judgment of the Board, recovery would be contrary to the purpose of this subchapter or the Railroad Unemployment Insur-

ance Act [45 U.S.C. 351 et seq.] or would be against equity or good conscience.

#### (d) Liability of officers

No certifying or disbursing officer shall be held liable for any amount certified or paid by him in good faith to any person where the recovery of such amount is waived under subsection (c) of this section or has been begun but cannot be completed under subsection (a) of this section.

(Aug. 29, 1935, ch. 812, §10, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93-445, title I, §101, Oct. 16, 1974, 88 Stat. 1344; amended Pub. L. 97-35, title XI, §1123, Aug. 13, 1981, 95 Stat. 638.)

### Editorial Notes

#### REFERENCES IN TEXT

The Railroad Unemployment Insurance Act, referred to in subsecs. (a) and (c), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§351 et seq.) of this title. For complete classification of this Act to the Code, see section 367 of this title and Tables.

The Social Security Act, referred to in subsec. (a), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

#### AMENDMENTS

1981—Subsec. (a). Pub. L. 97-35 inserted provisions authorizing Board to recover from any payment which would be made to an individual by Board under section 231f(b)(2) of this title amount of annuity payments made to such individual which are erroneous because of such individual's entitlement to monthly insurance benefits under title II of the Social Security Act.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Jan. 1, 1975, see section 1129 of Pub. L. 97-35, set out as a note under section 231 of this title.

### § 231j. Waiver of annuities

Any person awarded an annuity under this subchapter may decline to accept all or any part of such annuity by a waiver signed and filed with the Board. Such a waiver may be revoked in writing at any time, but no payment of the annuity waived shall be made covering the period during which such waiver was in effect. Such a waiver will have no effect on entitlement to, or the amount of, any other annuity or benefit.

(Aug. 29, 1935, ch. 812, §11, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93-445, title I, §101, Oct. 16, 1974, 88 Stat. 1344.)

### § 231k. Incompetence

(a) Every individual receiving or claiming benefits, or to whom any right or privilege is extended, under this subchapter or any other Act of Congress now or hereafter administered, in whole or in part, by the Board shall be conclusively presumed to have been competent until

the date on which the Board receives written notice, in a form and manner acceptable to the Board, that he is an incompetent, or a minor, for whom a guardian or other person legally vested with the care of his person or estate has been appointed: *Provided, however*, That, regardless of the legal competency or incompetency of an individual entitled to a benefit administered by the Board, the Board may, if it finds the interest of such individual to be served thereby, recognize actions by, and conduct transactions with, and make payments to, such individual, or recognize actions by, and conduct transactions with, and make payments to, a relative or some other person for such individual's use and benefit.

(b) Every guardian or other person legally vested with the care of the person or estate of an incompetent or minor who is receiving or claiming benefits, or to whom any right or privilege is extended, under this subchapter or any other Act of Congress now or hereafter administered, in whole or in part, by the Board shall have power everywhere, in the manner and to the extent prescribed by the Board, but subject to the provisions of the preceding subsection, to take any action necessary or appropriate to perfect any right or exercise any privilege of the incompetent or minor and to conduct all transactions on his behalf under this subchapter or any other Act of Congress now or hereafter administered, in whole or in part, by the Board. Any payment made pursuant to the provisions of this section shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.

(Aug. 29, 1935, ch. 812, §12, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93-445, title I, §101, Oct. 16, 1974, 88 Stat. 1345.)

#### § 231l. Penalties

(a) Any person who shall knowingly fail or refuse to make any report or furnish any information required by the Board in the administration of this subchapter, including the provisions of section 231f(b)(2) of this title or who shall knowingly make or cause to be made any false or fraudulent statement or report when a statement or report is required to be made for the purpose of this subchapter, or who shall knowingly make or aid in making any false or fraudulent statement or claim for the purpose of causing an award or payment to be made, shall be punished by a fine of not more than \$10,000 or by imprisonment not exceeding one year, or both.

(b) All fines and penalties imposed by a court pursuant to this subchapter shall be paid to the court and be remitted from time to time by order of the judge to the Treasury of the United States to be credited to the Railroad Retirement Account.

(Aug. 29, 1935, ch. 812, §13, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93-445, title I, §101, Oct. 16, 1974, 88 Stat. 1345.)

#### § 231m. Assignability; exemption from levy

(a) Except as provided in subsection (b) of this section and the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.], notwithstanding any other law

of the United States, or of any State, territory, or the District of Columbia, no annuity or supplemental annuity shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated<sup>1</sup>

(b)(1) This section shall not operate to exclude the amount of any supplemental annuity paid to an individual under section 231a(b) of this title from income taxable pursuant to the Federal income tax provisions of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.].

(2) This section shall not operate to prohibit the characterization or treatment of that portion of an annuity under this subchapter which is not computed under section 231b(a), 231c(a), or 231c(f) of this title, or any portion of a supplemental annuity under this subchapter, as community property for the purposes of, or property subject to, distribution in accordance with a court decree of divorce, annulment, or legal separation or the terms of any court-approved property settlement incident to any such court decree. The Board shall make payments of such portions in accordance with any such characterization or treatment or any such decree or settlement.

(3)(A) Payments made pursuant to paragraph (2) of this subsection shall not require that the employee be entitled to an annuity under section 231a(a)(1) of this title: *Provided, however*, That where an employee is not entitled to such an annuity, payments made pursuant to paragraph (2) may not begin before the month in which the following three conditions are satisfied:

(i) The employee has completed ten years of service in the railroad industry or, five years of service all of which accrues after December 31, 1995.

(ii) The spouse or former spouse attains age 62.

(iii) The employee attains age 62 (or if deceased, would have attained age 62).

(B) Payments made pursuant to paragraph (2) of this subsection shall terminate upon the death of the spouse or former spouse, unless the court document provides for termination at an earlier date. Notwithstanding the language in a court order, that portion of payments made pursuant to paragraph (2) which represents payments computed pursuant to section 231b(f)(2) of this title shall not be paid after the death of the employee.

(C) If the employee is not entitled to an annuity under section 231a(a)(1) of this title, payments made pursuant to paragraph (2) of this subsection shall be computed as though the employee were entitled to an annuity.

(Aug. 29, 1935, ch. 812, §14, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93-445, title I, §101, Oct. 16, 1974, 88 Stat. 1345; amended Pub. L. 98-76, title IV, §419(a), Aug. 12, 1983, 97 Stat. 438; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 110-458, title I, §110(a)(1), Dec. 23, 2008, 122 Stat. 5112.)

<sup>1</sup> So in original. Probably should be followed by a period.