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employee. However, if a number of employees are employed under substantially the same circumstances and working conditions, the initial estimate established for one such employee may be used as the initial estimate for other employees in that group.

(ii) *Adjusting estimate.* If the quarterly estimate of tips in respect of a particular employee continues to differ substantially from the amount of tips reported by the employee and there are no unusual factors involved (for example, an extended absence from work due to illness) the employer shall make an appropriate adjustment of his estimate of the amount of tips that will be reported by the employee.

(iii) *Reasonableness of estimate.* The employer must be prepared, upon request of the district director, to disclose the factors upon which he relied in making the estimate, and his reasons for believing that the estimate is reasonable.

(d) *Employee tax not collected by employer.* If—

(1) The amount of the employee tax imposed by section 3101 in respect of those tips received by an employee which constitute wages exceeds

(2) The amount of employee tax imposed by section 3101 (in respect of tips reported by the employee to the employer) which can be collected by the employer from such employee's wages (exclusive of tips) which are under the control of the employer or from funds referred to in paragraph (a)(3) of this section,

the employee shall be liable for the payment of tax in an amount equal to such excess. For provisions relating to the manner and time of payment of employee tax by an employee, see paragraph (d) of §31.6011(a)–1 and paragraph (a)(4) of §31.6071(a)–1. For provisions relating to statements required to be furnished by employers to employees in respect of uncollected employee tax on tips reported to the employer, see §31.6053–2.

[T.D. 7001, 34 FR 998, Jan. 23, 1969; 34 FR 1554, Jan. 31, 1969]

TAX ON EMPLOYERS

§31.3111–1 Measure of employer tax.

The employer tax is measured by the amount of wages paid after 1954 with respect to employment after 1936. See §31.3121(a)–1, relating to wages, and §§31.3121(b)–1 to 31.3121(b)–4, inclusive, relating to employment. For provisions relating to time of payment of wages, see §31.3121(a)–2.

[T.D. 6744, 29 FR 8306, July 2, 1964]

§31.3111–2 Rates and computation of employer tax.

(a) *Old-age, survivors, and disability insurance.* The rates of employer tax for old-age, survivors, and disability insurance with respect to wages paid in calendar years after 1954 are as follows:

Calendar year	*Percent*
1955 and 1956	2
1957 and 1958	2.25
1959	2.5
1960 and 1961	3
1962	3.125
1963 to 1965, both inclusive	3.625
1966	3.85
1967	3.9
1968	3.8
1969 and 1970	4.2
1971 and 1972	4.6
1973	4.85
1974 to 2010, both inclusive	4.95
2011 and subsequent calendar years	5.95

(b) *Hospital insurance.* The rates of employer tax for hospital insurance with respect to wages paid in calendar years after 1965 are as follows:

Calendar year	*Percent*
1966	0.35
1967	.50
1968 to 1972, both inclusive	.60
1973	1.0
1974 to 1977, both inclusive	0.90
1978 to 1980, both inclusive	1.10
1981 to 1985, both inclusive	1.35
1986 and subsequent calendar years	1.50

(c) *Computation of employer tax.* The employer tax is computed by applying to the wages paid by the employer the rate in effect at the time such wages are paid.

[T.D. 6983, 33 FR 18014, Dec. 4, 1968, as amended by T.D. 7374, 40 FR 30948, July 24, 1975]

§31.3111–3 When employer tax attaches.

The employer tax attaches at the time that the wages are paid by the

employer. For provisions relating to the time of such payment, see § 31.3121(a)–2.

§ 31.3111–4 Liability for employer tax.

The employer is liable for the employer tax with respect to the wages paid to his employees for employment performed for him.

§ 31.3111–5 Manner and time of payment of employer tax.

The employer tax is payable to the district director in the manner and at the time prescribed in Subpart G of the regulations in this part.

§ 31.3112–1 Instrumentalities of the United States specifically exempted from the employer tax.

Section 3112 makes ineffectual as to the employer tax imposed by section 3111 those provisions of law which grant to an instrumentality of the United States an exemption from taxation, unless such provisions grant a specific exemption from the tax imposed by section 3111 by an express reference to such section or the corresponding section of prior law (section 1410 of the Internal Revenue Code of 1939). Thus, the general exemptions from Federal taxation granted by various statutes to certain instrumentalities of the United States without specific reference to the tax imposed by section 3111 or by section 1410 of the 1939 Code are rendered inoperative insofar as such exemptions relate to the tax imposed by section 3111. For provisions relating to the exception from employment of services performed in the employ of an instrumentality of the United States specifically exempted from the employer tax, see § 31.3121(b)(5)–1. For provisions relating to services performed for an instrumentality exempt on December 31, 1950, from the employer tax, see paragraph (c) of § 31.3121 (b) (6)–1.

GENERAL PROVISIONS

§ 31.3121(a)–1 Wages.

(a)(1) Whether remuneration paid after 1954 for employment performed after 1936 constitutes wages is determined under section 3121(a). This section and §§ 31.3121(a)(1)–1 to 31.3121(a)(15)–1, inclusive (relating to the statutory exclusions from wages), apply with respect only to remuneration paid after 1954 for employment performed after 1936. Whether remuneration paid after 1936 and before 1940 for employment performed after 1936 constitutes wages shall be determined in accordance with the applicable provisions of law and of 26 CFR (1939) Part 401 (Regulations 91). Whether remuneration paid after 1939 and before 1951 for employment performed after 1936 constitutes wages shall be determined in accordance with the applicable provisions of law and of 26 CFR (1939) Part 402 (Regulations 106). Whether remuneration paid after 1950 and before 1955 for employment performed after 1936 constitutes wages shall be determined in accordance with the applicable provisions of law and of 26 CFR (1939) Part 408 (Regulations 128).

(2) The term *compensation* as used in section 3231(e) of the Internal Revenue Code has the same meaning as the term *wages* as used in this section, determined without regard to section 3121(b)(9), except as specifically limited by the Railroad Retirement Tax Act (chapter 22 of the Internal Revenue Code) or regulation. The Commissioner may provide any additional guidance that may be necessary or appropriate in applying the definitions of sections 3121(a) and 3231(e).

(b) The term ''wages'' means all remuneration for employment unless specifically excepted under section 3121(a) (see §§ 31.3121(a)(1)–1 to 31.3121(a)(15)–1, inclusive) or paragraph (j) of this section.

(c) The name by which the remuneration for employment is designated is immaterial. Thus, salaries, fees, bonuses, and commissions on sales or on insurance premiums, are wages if paid as compensation for employment.

(d) Generally the basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus, it may be paid on the basis of piecework, or a percentage of profits; and it may be paid hourly, daily, weekly, monthly, or annually. See, however, § 31.3121(a)(8)–1 which relates to the treatment of cash remuneration computed on a time basis for agricultural labor.