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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.

(e) Generally the medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as for example, goods, lodging, food, or clothing. Remuneration paid in items other than cash shall be computed on the basis of the fair value of such items at the time of payment. See, however, §§ 31.3121 (a)(7)–1, 31.3121(a)(8)–1, 31.3121(a)(10)–1, and 31.3121(a)(12)–1, relating to the treatment of remuneration paid in any medium other than cash for services not in the course of the employer's trade or business and for domestic service in a private home of the employer, for agricultural labor, for services performed by certain homeworkers, and as tips, respectively.

(f) Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called ''courtesy'' discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as remuneration for employment if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of his employees. The term ''facilities or privileges'', however, does not ordinarily include the value of meals or lodging furnished, for example, to restaurant or hotel employees, or to seamen or other employees aboard vessels, since generally these items constitute an appreciable part of the total remuneration of such employees.

(g) Amounts of so-called ''vacation allowances'' paid to an employee constitute wages. Thus, the salary of an employee on vacation, paid notwithstanding his absence from work, constitutes wages.

(h) Amounts paid specifically—either as advances or reimbursements—for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment. For amounts that are received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990, see § 31.3121(a)–3.

(i) Remuneration for employment, unless such remuneration is specifically excepted under section 3121(a) or paragraph (j) of this section, constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person in whose employ the services were performed and the individual who performed them.

Example. A is employed by B during the month of January 1955 in employment and is entitled to receive remuneration of $100 for the services performed for B, the employer, during the month. A leaves the employ of B at the close of business on January 31, 1955. On February 15, 1955 (when A is no longer an employee of B), B pays A the remuneration of $100 which was earned for the services performed in January. The $100 is wages and the taxes are payable with respect thereto.

(j) In addition to the exclusions specified in §§ 31.3121(a)(1)–1 to 31.3121(a)(15)–1, inclusive, the following types of payments are excluded from wages:

(1) Remuneration for services which do not constitute employment under section 3121(b) and which are not deemed to be employment under section 3121(c) (see § 31.3121(c)–1).

(2) Remuneration for services which are deemed not to be employment under section 3121(c) (see § 31.3121(c)–1).

(3) Tips or gratuities paid, prior to January 1, 1966, directly to an employee by a customer of an employer, and not accounted for by the employee to the employer. For provisions relating to the treatment of tips received by an employee after December 31, 1965, as wages, see §§ 31.3121(a)(12) and 31.3121(q).

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 7001, 34 FR 999, Jan. 23, 1969; T.D. 7374, 40 FR 30948, July 24, 1975; T.D. 8276, 54 FR 51027, Dec. 12, 1989; T.D. 8324, 55 FR 51696, Dec. 17, 1990; T.D. 8582, 59 FR 66189, Dec. 23, 1994]

§ 31.3121(a)–1T Question and answer relating to the definition of wages in section 3121(a) (Temporary).

The following question and answer relates to the definition of wages in section 3121(a) of the Internal Revenue Code of 1954, as amended by section