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§1.62–2 and the expenses are substantiated within a reasonable period of time, payments made under the arrangement that do not exceed the substantiated expenses are treated as paid under an accountable plan and are not wages. In addition, if both wages and the reimbursement or other expense allowance are combined in a single payment, the reimbursement or other expense allowance must be identified either by making a separate payment or by specifically identifying the amount of the reimbursement or other expense allowance.

(b) *When included in wages*—(1) *Accountable plans*—(i) *General rule.* Except as provided in paragraph (b)(1)(ii) of this section, if a reimbursement or other expense allowance arrangement satisfies the requirements of section 62(c) and §1.62–2, but the expenses are not substantiated within a reasonable period of time or amounts in excess of the substantiated expenses are not returned within a reasonable period of time, the amount paid under the arrangement in excess of the substantiated expenses is treated as paid under a nonaccountable plan, is included in wages, and is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period.

(ii) *Per diem or mileage allowances.* If a reimbursement or other expense allowance arrangement providing a per diem or mileage allowance satisfies the requirements of section 62(c) and §1.62–2, but the allowance is paid at a rate for each day or mile of travel that exceeds the amount of the employee's expenses deemed substantiated for a day or mile of travel, the excess portion is treated as paid under a nonaccountable plan and is included in wages. In the case of a per diem or mileage allowance paid as a reimbursement, the excess portion is subject to withholding and payment of employment taxes when paid. In the case of a per diem or mileage allowance paid as an advance, the excess portion is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the expenses with respect to which the advance was paid (i.e., the days or miles of travel) are substantiated. The Commissioner may, in his discretion, prescribe special rules in pronouncements of general applicability regarding the timing of withholding and payment of employment taxes on per diem and mileage allowances.

(2) *Nonaccountable plans.* If a reimbursement or other expense allowance arrangement does not satisfy the requirements of section 62(c) and §1.62–2 (e.g., the arrangement does not require expenses to be substantiated or require amounts in excess of the substantiated expenses to be returned), all amounts paid under the arrangement are treated as paid under a nonaccountable plan, are included in wages, and are subject to withholding and payment of employment taxes when paid.

(c) *Effective dates.* This section generally applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990. Paragraph (b)(1)(ii) of this section applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after January 1, 1991, with respect to expenses paid or incurred on or after January 1, 1991.

[T.D. 8324, 55 FR 51696, Dec. 17, 1990]

§31.3121(a)(1)–1 Annual wage limitation.

(a) *In general.* (1) The term ''wages'' does not include that part of the remuneration paid by an employer to an employee within any calendar year—

(i) After 1954 and before 1959 which exceeds the first $4,200 of remuneration,

(ii) After 1958 and before 1966 which exceeds the first $4,800 of remuneration,

(iii) After 1965 and before 1968 which exceeds the first $6,600 of remuneration,

(iv) After 1967 and before 1972 which exceeds the first $7,800 of remuneration,

(v) After 1971 and before 1973 which exceeds the first $9,000 of remuneration,

(vi) After 1972 and before 1974 which exceeds the first $10,800 of remuneration,

(vii) After 1973 and before 1975 which exceeds the first $13,200 of remuneration, or

(viii) After 1974 which exceeds the amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective for such calendar year

(exclusive of remuneration excepted from wages in accordance with paragraph (j) of §31.3121(a)–1 or §§31.3121(a)(2)–1 to 31.3121(a)(15)–1, inclusive) paid within the calendar year by an employer to the employee for employment performed for him at any time after 1936. For provisions relating to the treatment of tips for purposes of the annual wage limitation see §31.3121(q)–1.

(2) The annual wage limitation applies only if the remuneration received during any 1 calendar year by an employee from the same employer for employment performed after 1936 exceeds the amount of such limitation. The limitation in such case relates to the amount of remuneration received during any 1 calendar year for employment after 1936 and not to the amount of remuneration for employment performed in any 1 calendar year.

Example. Employee A, in 1967 receives $7,000 from employer B in part payment of $8,000 due him from employment performed in 1967. In 1968 A receives from employer B the balance of $1,000 due him for employment performed in 1967, and thereafter in 1968 also receives $7,000 for employment performed in 1968 for employer B. The first $6,600 of the $7,000 received during 1967 is subject to the taxes in 1967. The remaining $400 received in 1967 is not included as wages and is not subject to the taxes. The balance of $1,000 received in 1968 for employment during 1967 is subject to the taxes during 1968 as is also the first $6,800 of the $7,000 thereafter received in 1968 ($1,000 plus $6,800 totaling $7,800, which is the annual wage limitation applicable to remuneration received in 1968 by an employee from any one employer). The remaining $200 received in 1968 is not included as wages and is not subject to the taxes.

(3) If during a calendar year the employee receives remuneration from more than one employer, the annual wage limitation does not apply to the aggregate remuneration received from all of such employers, but instead applies to the remuneration received during such calendar year from each employer with respect to employment after 1936. In such case the first remuneration received in any calendar year after 1974 up to the amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) (the first $13,200 received in 1974, the first $10,800 received in 1973, the first $9,000 received in 1972, the first $7,800 received in any calendar year after 1967 and before 1972, the first $6,600 received in any calendar year after 1965 and before 1968, the first $4,800 received in any calendar year after 1958 and before 1966, or the first $4,200 received in any calendar year after 1954 and before 1959) from each employer constitutes wages and is subject to the taxes, even though, under section 6413(c), the employee may be entitled to a special credit or refund of a portion of the employee tax deducted from his wages received during the calendar year. In this connection and in connection with the two examples immediately following, see §31.6413(c)–1, relating to special credits or refunds of employee tax. In connection with the annual wage limitation in the case of remuneration paid for services performed in the employ of the United States or a wholly owned instrumentality thereof, see §31.3122. In connection with the annual wage limitation in the case of remuneration paid for services performed in the employ of the Government of Guam, the Government of American Samoa, the District of Columbia, a political subdivision of the Government of Guam, or the Government of American Samoa, or any instrumentality of any of the foregoing which is wholly owned thereby, see §31.3125. In connection with the application of the annual wage limitation, see also paragraph (b) of this section, relating to the circumstances under which wages paid by a predecessor employer are deemed to be paid by his successor. In connection with the annual wage limitation in the case of remuneration paid after December 31, 1978, from two or more related corporations that compensate an employee through a common paymaster, see §31.3121(s)–1.

Example 1. During 1968 employee C receives from employer D a salary of $1,300 a month

for employment performed for D during the first 7 months of 1968, or total remuneration of $9,100. At the end of the 6th month C has received $7,800 from employer D, and only that part of his total remuneration from D constitutes wages subject to the taxes. The $1,300 received by employee C from employer D in the 7th month is not included as wages and is not subject to the taxes. At the end of the 7th month C leaves the employ of D and enters the employ of E. C receives remuneration of $1,560 a month from employer E in each of the remaining 5 months of 1968, or total remuneration of $7,800 from employer E. The entire $7,800 received by C from employer E constitutes wages and is subject to the taxes. Thus, the first $7,800 received from employer D and the entire $7,800 received from employer E constitute wages.

Example 2. During the calendar year 1968 F is simultaneously an officer (an employee) of the X Corporation, the Y Corporation, and the Z Corporation and during such year receives a salary of $7,800 from each corporation. Each $7,800 received by F from each of the Corporations X, Y, and Z (whether or not such corporations are related) constitutes wages and is subject to the taxes.

(b) *Wages paid by predecessor attributed to successor.* (1) If an employer (hereinafter referred to as a successor) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and if immediately after the acquisition the successor employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for purposes of the application of the annual wage limitation set forth in paragraph (a) of this section, any remuneration (exclusive of remuneration excepted from wages in accordance with paragraph (j) of §31.3121(a)–1 or §§31.3121(a)(2)–1 to 31.3121(a)(15)–1, inclusive) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by the predecessor during such calendar year and prior to the acquisition shall be considered as having been paid by the successor.

(2) The wages paid, or considered as having been paid, by a predecessor to an employee shall, for purposes of the annual wage limitation, be treated as having been paid to such employee by a successor if:

(i) The successor during a calendar year acquired substantially all the property used in a trade or business, or used in a separate unit of a trade or business, of the predecessor;

(ii) Such employee was employed in the trade or business of the predecessor immediately prior to the acquisition and is employed by the successor in his trade or business immediately after the acquisition; and

(iii) Such wages were paid during the calendar year in which the acquisition occurred and prior to such acquisition.

(3) The method of acquisition by an employer of the property of another employer is immaterial. The acquisition may occur as a consequence of the incorporation of a business by a sole proprietor or a partnership, the continuance without interruption of the business of a previously existing partnership by a new partnership or by a sole proprietor, or a purchase or any other transaction whereby substantially all the property used in a trade or business, or used in a separate unit of a trade or business, of one employer is acquired by another employer.

(4) Substantially all the property used in a separate unit of a trade or business may consist of substantially all the property used in the performance of an essential operation of the trade or business, or it may consist of substantially all the property used in a relatively self-sustaining entity which forms a part of the trade or business.

Example 1. The M Corporation which is engaged in the manufacture of automobiles, including the manufacture of automobile engines, discontinues the manufacture of the engines and transfers all the property used in such manufacturing operation to the N Company. The N Company is considered to have acquired a separate unit of the trade or business of the M Corporation, namely, its engine manufacturing unit.

Example 2. The R Corporation which is engaged in the operation of a chain of grocery stores transfers one of such stores to the S Company. The S Company is considered to have acquired a separate unit of the trade or business of the R Corporation.

(5) A successor may receive credit for wages paid to an employee by a predecessor only if immediately prior to the acquisition the employee was employed

by the predecessor in his trade or business which was acquired by the successor and if immediately after the acquisition such employee is employed by the successor in his trade or business (whether or not in the same trade or business in which the acquired property is used). If the acquisition involves only a separate unit of a trade or business of the predecessor, the employee need not have been employed by the predecessor in that unit provided he was employed in the trade or business of which the acquired unit was a part.

Example. The Y Corporation in 1968 acquires by purchase all the property of the X Company and immediately after the acquisition employs in its trade or business employee A, who, immediately prior to the acquisition, was employed by the X Company. The X Company has in 1968 (the calendar year in which the acquisition occurs) and prior to the acquisition paid $5,000 of wages to A. The Y Corporation in 1968 pays to A remuneration of $5,000 with respect to employment. Only $2,800 of the remuneration paid by the Y Corporation is considered to be wages. For purposes of the $7,800 limitation, the Y Corporation is credited with the $5,000 paid to A by the X Company. If in the same calendar year, the Z Company acquires the property by purchase from the Y Corporation and A immediately after the acquistion is employed by the Z Company in its trade or business, no part of the remuneration paid to A by the Z Company in the year of the acquisition will be considered to be wages. The Z Company will be credited with the remuneration paid to A by the Y Corporation and also with the wages paid to A by the X Company (considered for purposes of the application of the $7,800 limitation as having also been paid by the Y Corporation).

(6) Where a corporation described in section 501(c)(3) which is exempt from income tax under section 501(a) has in effect a certificate filed pursuant to section 3121(k), or pursuant to section 1426(1) of the Internal Revenue Code of 1939, waiving its exemption from the taxes imposed by the Act, the activity in which such corporation is engaged is considered to be its trade or business for the purpose of determining whether the transferred property was used in the trade or business of the predecessor and for the purpose of determining whether the employment by the predecessor and the successor of an individual whose services were retained by the successor constitute employment in a trade or business. Thus, if a charitable or religious organization, subject to the taxes by virtue of its certificate, acquires all the property of another such organization likewise subject to the taxes and retains the services of employees of the predecessor, wages paid to such employees by the predecessor in the year of the acquisition (and prior to such acquisition) will be attributed to the successor for purposes of the annual wage limitation.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6744, 29 FR 8307, July 2, 1964; T.D. 6983, 33 FR 18015, Dec. 4, 1968; T.D. 7374, 40 FR 30948, July 24, 1975; T.D. 7660, 44 FR 75139, Dec. 19, 1979]

§ 31.3121(a)(2)–1 Payments under employers' plans on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death.

(a) The term ''wages'' does not include the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(1) An employee's retirement,

(2) Sickness or accident disability of an employee or any of his dependents,

(3) Medical or hospitalization expenses in connection with sickness or accident disability of an employee or any of his dependents, or

(4) Death of an employee or any of his dependents.

(b) The plan or system established by an employer need not provide for payments on account of all of the specified items, but such plan or system may provide for any one or more of such items. Payments for any one or more of such items under a plan or system established by an employer solely for the dependents of his employees are not within this exclusion from wages.

(c) Dependents of an employee include the employee's husband or wife,