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(Income Tax Regulations). When used in this section, the term ''moving expenses'' has the same meaning as when used in section 217 and the regulations thereunder.

(b) Except as otherwise provided in paragraph (a) of this section, or in a numbered paragraph of section 3121(a), amounts paid to or on behalf of an employee for moving expenses are wages for purposes of section 3121(a).

[T.D. 7375, 40 FR 42350, Sept. 12, 1975]

### § 31.3121(a)(12)–1 Tips.

The term ''wages'' does not include remuneration received by an employee after December 1965 in the form of tips if—

(a) The tips are paid in any medium other than cash, or

(b) The cash tips received by an employee in any calendar month in the course of his employment by an employer are less than $20.

If the cash tips received by an employee in a calendar month after December 1965 in the course of his employment by an employer amount to $20 or more, none of the cash tips received by the employee in such calendar month are excluded from the term ''wages'' under this section. The cash tips to which this section applies include checks and other monetary media of exchange. Tips received by an employee in any medium other than cash, such as passes, tickets, or other goods or commodities do not constitute wages. If an employee in any calendar month performs services for two or more employers and receives tips in the course of his employment by each employer, the $20 test is to be applied separately with respect to the cash tips received by the employee in respect of his services for each employer and not to the total cash tips received by the employee during the month. As to the time tips are deemed paid, see § 31.3121(q)–1. For provisions relating to the treatment of tips received by an employee prior to 1966, see paragraph (j)(3) of § 31.3121 (a)–1.

[T.D. 7001, 34 FR 999, Jan. 23, 1969]

### § 31.3121(a)(13)–1 Payments under certain employers' plans after retirement, disability, or death.

(a) *In general.* The term ''wages'' does not include the amount of any payment or series of payments made after January 2, 1968, by an employer to, or on behalf of, an employee or any of his dependents under a plan established by the employer which makes provisions 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), which is paid or commences to be paid upon or within a reasonable time after the termination of an employee's employment relationship because of the employee's—

(1) Death,

(2) Retirement for disability, or

(3) Retirement after attaining an age specified in the plan established by the employer or in a pension plan of the employer at the age at which a person in the employee's circumstances is eligible for retirement.

A payment or series of payments made under the circumstances described in the preceding sentence is excluded from ''wages'' even if made pursuant to an incentive compensation plan which also provides for the making of other types of payments. However, any payment or series of payments which would have been paid if the employee's relationship had not been terminated is not excluded from ''wages'' under this section and section 3121(a)(13). For example, lump-sum payments for unused vacation time or a final paycheck received after retirement are payments which the employee would have received whether or not he retired and therefore are not excluded from ''wages'' under this section. Further, if any payment is made upon or after termination of employment for any reason other than those set out in subparagraphs (1), (2), and (3) of this paragraph such payment is not excludable from ''wages'' by this section. For example, if a pension plan provides for retirement upon disability, completion of 30 years of service, or attainment of age 65, and if an employee who is not disabled retires at age 61 after 30 years

of service, none of the retirement payments made to the employee under the pension plan (including any made after he is 65) is excludable from ''wages'' under this section. However, if the pension plan had conditioned retirement after 30 years of service upon attainment of age 60, all of the retirement payments would have been excludable.

(b) *Plan.* The plan or system established by an employer need not provide for payments because of termination of employment for all the reasons set out in paragraphs (a)(1), (2), and (3) of this section, but such plan or system may provide for payments because of termination for any one or more of such reasons. Payments because of termination of employment for any one or more of such reasons 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.* Dependents of an employee include the employee's husband or wife, children, and any other members of the employee's immediate family.

(d) *Benefit payment.* It is immaterial for purposes of this exclusion whether the amount or possibility of benefit payments is paid on account of services rendered or taken into consideration in fixing the amount of an employee's remuneration or whether such payments are required, expressly or impliedly, by the contract of service.

(e) *Example.* The application of this section may be illustrated by the following example:

*Example.* A, an employee, receives a salary of $1,500 a month, payable on the 5th day of the month following the month for which the salary is earned. A's employer has established an incentive compensation plan for a class of his employees, including A, providing for the payment of deferred compensation on termination of employment, including termination upon an employee's death, retirement at age 65 (the retirement age specified in the plan), or retirement for disability. On March 1, 1973, A attains the age of 65 and retires. On March 5, 1973, A receives $5,500 from his employer of which $1,500 represents A's salary for services he performed in February 1973, and $4,000 represents incentive compensation paid under the employer's plan. The amount of $4,000 is excluded from ''wages'' under this section. The amount of $1,500 is not excluded from ''wages'' under this section.

[T.D. 7374, 40 FR 30949, July 24, 1975]

### § 31.3121(a)(14)–1 Payments by employer to survivor or estate of former employee.

The term ''wages'' does not include any payment by an employer to a survivor or the estate of a former employee made after 1972 and after the calendar year in which such employee died.

[T.D. 7374, 40 FR 30950, July 24, 1975, as amended by T.D. 7373, 40 FR 30957, July 24, 1975]

### § 31.3121(a)(15)–1 Payments by employer to disabled former employee.

The term ''wages'' does not include any payment made after 1972 by an employer to an employee, if at the time such payment is made such employee is entitled to disability insurance benefits under section 223(a) of the Social Security Act and such entitlement commenced prior to the calendar year in which such payment is made, and if such employee did not perform any service for such employer during the period for which such payment is made.

[T.D. 7374, 40 FR 30950, July 24, 1975, as amended by T.D. 7373, 40 FR 30957, July 24, 1975]

### § 31.3121(a)(18)–1 Payments or benefits under a qualified educational assistance program.

The term ''wages'' does not include any payment made, or benefit furnished, to or for the benefit of an employee in a taxable year beginning after December 31, 1978, if at the time of such payment or furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127.

[T.D. 7898, 48 FR 31019, July 6, 1983]

### § 31.3121(b)–1 Employment; services to which the regulations in this subpart apply.

(a) The provisions of the regulations in this subpart relating to the term ''employment'' apply with respect to services performed after 1954. Certain provisions also apply with respect to services performed before 1955 for which the remuneration is paid after