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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,

children, and any other members of the employee's immediate family.

(d) It is immaterial for purposes of this exclusion whether the amount or possibility of such benefit payments is 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.

§ 31.3121(a)(3)–1 Retirement payments.

The term ''wages'' does not include any payment made by an employer to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of the employee's retirement. Thus, payments made to an employee on account of his retirement are excluded from wages under this exception even though not made under a plan or system.

§ 31.3121(a)(4)–1 Payments on account of sickness or accident disability, or medical or hospitalization expenses.

The term ''wages'' does not include any payment made by an employer to, or on behalf of, an employee on account of the employee's sickness or accident disability or the medical or hospitalization expenses in connection with the employee's sickness or accident disability, if such payment is made after the expiration of 6 calendar months following the last calendar month in which such employee worked for such employer. Such payments are excluded from wages under this exception even though not made under a plan or system. If the employee does not actually perform services for the employer during the requisite period, the existence of the employer- employee relationship during that period is immaterial.

§ 31.3121(a)(5)–1 Payments from or to certain tax-exempt trusts, or under or to certain annuity plans or bond purchase plans.

(a) *Payments from or to certain tax- exempt trusts.* The term ''wages'' does not include any payment made—

(1) By an employer, on behalf of an employee or his beneficiary, into a trust, or

(2) To, or on behalf of, an employee or his beneficiary from a trust.

If at the time of such payment the trust is exempt from tax under section 501(a) as an organization described in section 401(a). A payment made to an employee of such a trust for services rendered as an employee of the trust and not as a beneficiary thereof is not within this exclusion from wages.

(b) *Payments under or to certain annuity plans.* (1) The term ''wages'' does not include any payment made after December 31, 1962—

(i) By an employer, on behalf of an employee or his beneficiary, into an annuity plan, or

(ii) To, or on behalf of, an employee or his beneficiary under an annuity plan, if at the time of such payment the annuity plan is a plan described in section 403(a).

(2) The term ''wages'' does not include any payment made before January 1, 1963—

(i) By an employer, on behalf of an employee or his beneficiary, into an annuity plan, or

(ii) To, or on behalf of, an employee or his beneficiary under an annuity plan,

if at the time of such payment the annuity plan meets the requirements of section 401(a)(3), (4), (5), and (6).

(c) *Payments under or to certain bond purchase plans.* The term ''wages'' does not include any payment made after December 31, 1962—

(1) By an employer, on behalf of an employee or his beneficiary, into a bond purchase plan, or

(2) To, or on behalf of, an employee or his beneficiary under a bond purchase plan,

if at the time of such payment the plan is a qualified bond purchase plan described in section 405(a).

[T.D. 6876, 31 FR 2596, Feb. 10, 1966]

§ 31.3121(a)(6)–1 Payment by an employer of employee tax under section 3101 or employee contributions under a State law.

The term ''wages'' does not include any payment by an employer (without deduction from the remuneration of, or other reimbursement from, the employee) of either (a) the employee tax