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taxes even though $10 thereof represents payment for such service performed by A for X in December 1954.

In determining whether $50 or more has been paid either for domestic service in a private home of the employer or for service not in the course of the employer's trade or business, only cash remuneration for such service shall be taken into account. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as lodging, food, clothing, car tokens, transportation passes or tickets, or other goods or commodities, is disregarded in determining whether the cash-remuneration test is met. If an employee receives cash remuneration from an employer in a calendar quarter for both types of services the $50 cash-remuneration test is to be applied separately to each type of service. If an employee receives cash remuneration from more than one employer in a calendar quarter for domestic service in a private home of the employer or for service not in the course of the employer's trade or business, the $50 cash-remuneration test is to be applied separately to the remuneration received from each employer. See §31.3102–1, relating to deduction of employee tax or amounts equivalent to the tax from cash payments for the services described in this section; §31.3121(a)–2, relating to time of payment of wages for such services; and §31.3121(i)–1, relating to computations to the nearest dollar of any payment of cash remuneration for domestic service in a private home of the employer.

§31.3121(a)(8)–1 Payments for agricultural labor.

(a) *Scope of this section.* For purposes of the regulations in this section, the term ''agricultural labor'' means only such agricultural labor (see §31.3121(g)–1) as constitutes employment or is deemed to constitute employment by reason of the rules relating to included and excluded services contained in section 3121(c) (see §31.3121(c)–1) or the corresponding section of prior law.

(b) *Payments other than in cash.* The term ''wages'' does not include remuneration paid in any medium other than cash for agricultural labor. For meaning of the term ''cash remuneration'', see paragraph (f) of the regulations in this section.

(c) *Cash payments.* (1) The term ''wages'' does not include cash remuneration paid by an employer in the calendar year 1955 or 1956 to an employee for agricultural labor unless the cash remuneration paid in such year by the employer to the employee for such labor is $100 or more.

(2)(i) The term ''wages'' does not include cash remuneration paid by an employer in any calendar year after 1956 to an employee for agricultural labor unless the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or unless the employee performs agricultural labor for the employer on 20 days or more during such year for cash remuneration computed on a time basis.

(ii) The application of the provisions of this subparagraph may be illustrated by the following example:

Example. On 18 days in 1957 A performs agricultural labor for X for cash remuneration of $8 per day, and X pays A $144 in such year. A performs no further service for X. Neither the $150-cash-remuneration test nor the 20-day test is met. Accordingly, the remuneration paid by X to A is not subject to the taxes. If in 1957 A had performed agricultural labor for X on 20 days for cash remuneration of $7.20 per day, the $144 paid by X to A would have been subject to the taxes because the 20-day test would have been met. Or if A had performed the 18 days of agricultural labor for cash remuneration of $8.50 per day and had been paid in full therefor in 1957, his cash remuneration of $153 would have been subject to the taxes because the $150-cash-remuneration test would have been met.

(d) *Application of cash-remuneration test.* (1) If an employee receives cash remuneration from an employer both for services which constitute agricultural labor and for services which do not constitute agricultural labor, only the amount of such remuneration which is attributable to agricultural labor shall be included in determining whether cash remuneration of $150 or more ($100 or more in 1955 or 1956) has been paid in the calendar year by the employer to the employee for agricultural labor.

Example. Employer X operates a store and also is engaged in farming operations. Employee A, who regularly performs services for

X in connection with the operation of the store, works on X's farm when additional help is required for the farm activities. In the calendar year 1957, X pays A $140 in cash computed on a time basis for agricultural labor performed on 19 different days in such year, and $2,260 for services performed in connection with the operation of the store. Since the cash remuneration paid by X to A in the calendar year 1957 for agricultural labor is less than $150, the cash-remuneration test is not met. Since A performed agricultural labor for X on less than 20 days in 1957, the 20-day test set forth in section 3121(a)(8) is not met. The $140 paid by X to A in 1957 for agricultural labor does not constitute wages and is not subject to the taxes.

(2) The test relating to cash remuneration of $150 or more ($100 or more in 1955 or 1956) is based on the cash remuneration paid in a calendar year rather than on the remuneration earned during a calendar year. It is immaterial if such cash remuneration is paid in a calendar year other than the year in which the agricultural labor is performed.

Example. Employer X pays cash remuneration of $150 in the calendar year 1957 to employee A for agricultural labor. Such remuneration constitutes wages even though $10 of such amount represents payment for agricultural labor performed by A for X in December 1956.

(3) In determining whether $150 or more ($100 or more in 1955 or 1956) has been paid to an employee for agricultural labor, only cash remuneration for such labor shall be taken into account. If an employee receives cash remuneration in any one calendar year from more than one employer for agricultural labor, the cash-remuneration test is to be applied with respect to the remuneration received by the employee from each employer in such calendar year for such labor.

(e) *Application of 20-day test.* (1) Only agricultural labor for which cash remuneration is computed on a time basis is taken into account in determining whether an employee performs such labor for such remuneration on 20 days or more during a calendar year after 1956. For purposes of the 20-day test, the amount of such remuneration is immaterial, and it is immaterial if, in addition to cash remuneration computed on a time basis, the remuneration for such labor also includes remuneration other than cash or remuneration which is not computed on a time basis. If cash remuneration paid to an employee after 1956 for agricultural labor is computed on a time basis, such cash remuneration does not constitute ''wages'' unless it is paid in a calendar year in which either the 20-day test or the $150-cash-remuneration test is met.

Example. Employer X employs A to construct fences on a farm owned by X. The work constitutes agricultural labor and is performed on 50 days in November and December 1957. A is not employed by X at any other time. A's remuneration consists of meals and lodging, $5 cash per day, and additional cash measured by the amount of fence constructed. X pays A $140 cash in December 1957 and $160 cash in January 1958, in full payment for the work. Inasmuch as A has performed agricultural labor for X on 50 days in 1957, for remuneration computed on a time basis, the 20-day test is met for 1957 and the $140 cash paid in 1957 is subject to the taxes. It is immaterial that the $150-cash-remuneration test is not met for 1957. Inasmuch as X has paid A $160 cash remuneration in 1958 for agricultural labor, the $150-cash-remuneration test is met for 1958 and the $160 cash paid in 1958 is subject to the taxes. It is immaterial that the 20-day test is not met for 1958. If the remuneration paid by X to A in January 1958 had been in an amount less than $150, neither the $150-cash-remuneration test nor the 20-day test would have been met for the calendar year 1958, and the remuneration paid by X to A in such year would not have been subject to the taxes.

(2) For the purpose of determining whether an employee performs agricultural labor for an employer on 20 days or more during any calendar year after 1956, for cash remuneration computed on a time basis, there shall be counted as one day—

(i) Any day or portion thereof on which the employee actually performs such labor for cash remuneration computed one time basis; and

(ii) Any day or portion thereof on which the employee does not perform agricultural labor but with respect to which cash remuneration is paid or payable to the employee for such labor, such as a day on which the employee is sick or on vacation.

An employee who on a particular day reports for work and, at the direction of his employer, holds himself in readiness to perform agricultural labor shall

be considered to be engaged in the actual performance of such labor on that day. For purposes of the regulations in this section, a day is a period of 24 hours commencing at midnight and ending at midnight.

Example. During the period of 20 days beginning April 11, 1957 and ending April 30, 1957, employee A was employed by employer X to perform agricultural labor on X's farm. The agreement provided that A would be furnished room and board at the farm and would be paid cash wages of $150 per month. On one day during the 20-day period A was sick and unable to work, and on another day X directed A to refrain from work because of weather conditions. At the termination of A's employment X paid A cash wages of $100 for the full 20-day period. The 20-day test had been met and the $100 cash wages were subject to the taxes.

(3) If in any one calendar year an employee performs agricultural labor for more than one employer, the 20-day test is to be applied with respect to the agricultural labor performed by the employee in such year for each employer.

(f) *Meaning of ''cash remuneration.''* Cash remuneration includes checks and other monetary media of exchange. Cash remuneration does not include payments made in any other medium, such as lodging, food, clothing, car tokens, transportation passes or tickets, farm products, or other goods or commodities.

(g) *Cross references.* (1) For provisions relating to deductions of employee tax or amounts equivalent to the tax from cash payments for agricultural labor, see § 31.3102–1.

(2) For provisions relating to the time of payment of wages for agricultural labor, see § 31.3121(a)–2.

(3) For provisions relating to records to be kept with respect to agricultural labor, see paragraph (b) of § 31.6001–2.

[T.D. 6744, 29 FR 8308, July 2, 1964]

§ 31.3121(a)(9)–1 Payments to employees for nonwork periods.

(a) The term ''wages'' does not include any payment (other than vacation or sick pay) made by an employer to an employee for a period throughout which the employment relationship exists between the employer and the employee, but in which the employee does not work (other than being subject to call for the performance of work) for the employer, if such payment is made after the calendar month in which—

(1) The employee attains age 65, if the employee is a man to whom the payment is made before January 1975, or if the employee is a woman to whom the payment is made before November 1956, or

(2) The employee attains age 62, if the employee is a man to whom the payment is made after December 1974, or if the employee is a woman to whom the payment is made after October 1956.

(b) Vacation or sick pay is not within this exclusion from wages. If the employee does any work for the employer in the period for which the payment is made, no remuneration paid by such employer to such employee with respect to such period is within this exclusion from wages.

Example. Mrs. A, an employee of X, attained the age of 62 on September 15, 1956, and discontinued the performance of regular work for X on September 30, 1956. Their employment relationship continued for several years until Mrs. A's death, and X paid Mrs. A $50 per month as consideration for Mrs. A's agreement to work when asked by X. The payment for each month was made on the first day of each succeeding month. After September 30, 1956, the only work performed by Mrs. A for X was performed on one day in October 1956. The payment made by X to Mrs. A on November 1 (for October 1956) is not excluded from wages under this exception, but the payments made thereafter are excluded from wages. The payment on November 1 was not excluded because Mrs. A worked for X on one day in October 1956. (Inasmuch as Mrs. A had attained age 62 in September 1956, the November 1 payment would have been excluded if Mrs. A had not performed any work for X in October 1956.)

[T.D. 6744, 29 FR 8309, July 2, 1964, as amended by T.D. 7373, 40 FR 30957, July 24, 1975; 40 FR 32831, Aug. 5, 1975]

§ 31.3121(a)(10)–1 Payments to certain home workers.

(a) The term ''wages'' does not include remuneration paid by an employer in any calendar quarter to an employee—

(1) For services performed after 1954 as a home worker who is an employee by reason of the provisions of section 3121(d)(3)(C) (see paragraph (d) of § 31.3121(d)–1), or