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1954 (see paragraph (b) of §31.3121(b)–2. For provisions relating generally to services performed before 1955, see paragraph (a) of §31.3121 (b)–2. For provisions relating to the circumstances under which services which do not constitute employment are nevertheless deemed to be employment, and relating to the circumstances under which services which constitute employment are nevertheless deemed not to be employment, see §31.3121 (c)–1. For provisions relating to who are employees and who are employers see §§31.3121 (d)–1 and 31.3121 (d)–2, respectively.

(b) The taxes apply with respect to remuneration paid after 1954 for services performed before 1955, as well as for services performed after 1954, to the extent that the remuneration and services constitute wages and employment. See §§31.3121(a)–1 to 31.3121(a)(13)–1 relating to wages.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6983, 33 FR 18015, Dec. 4, 1968]

§31.3121(b)–2 Employment; services performed before 1955.

(a) *General rule.* (1) Subject to the provisions of paragraph (b) of this section:

(i) Services performed after 1936 and before 1955 which were employment under the applicable law in effect before 1955 constitute employment under section 3121(b).

(ii) Services performed after 1936 and before 1955 which were not employment under the applicable law in effect before 1955 do not constitute employment under section 3121(b).

(2) Except as provided in paragraph (b) of this section, determination of whether services performed before 1955 constitute employment shall be made in accordance with the applicable provisions of law in effect before 1955 and of the regulations thereunder. The regulations applicable in determining whether service performed after 1936 and before 1955 constitute employment are as follows:

(i) Services performed after 1936 and before 1940—26 CFR (1939) Part 401 (Regulations 91).

(ii) Services performed after 1939 and before 1951—26 CFR (1939) Part 402 (Regulations 106).

(iii) Services performed after 1950 and before 1955—26 CFR (1939) Part 408 (Regulations 128).

(b) *Certain services performed before 1955 the remuneration for which is paid after 1954.* (1) Services of the following character performed before 1955, for which remuneration is paid after 1954, constitute employment under section 3121(b):

(i) Agricultural labor, as defined in section 3121(g) (see §31.3121(g)–1), other than services of the character described in section 3121(b)(1) (relating to services performed in connection with the production or harvesting of certain oleoresinous products and services performed by certain foreign agricultural workers), which, at the time performed, constituted employment under section 1426(b) of the 1939 Code, or would have constituted employment except for the provisions of section 1426(b)(1) of such Code, as in effect at the time the services were performed.

(ii) Services not in the course of the employers' trade or business (see paragraph (a)(1) of §31.3121(a)(7)–1) which, at the time performed, constituted employment under section 1426(b) of the 1939 Code, or would have constituted employment except for the provisions of section 1426(b)(3) of such Code, as in effect at the time the services were performed.

(2) Services of the character described in paragraphs (a) and (b) of §31.3121(b)(1)–1, which were performed by certain foreign agricultural workers before 1955 and the remuneration for which is paid after 1954, do not constitute employment under section 3121(b), irrespective of whether they constituted employment under section 1426(b) of the 1939 Code, as in effect at the time the services were performed.

(3) This paragraph has no application to services performed before 1955 and the remuneration for which was paid before 1955.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6744, 29 FR 8309, July 2, 1964]