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public transportation system constitutes covered transportation service if no part of such transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and before 1951.

(2) *Additions acquired after 1950.* This subparagraph is applicable only in case of an acquisition after 1950 from private ownership of an addition to an existing public transportation system which was operated by a State or political subdivision on December 31, 1950, but no part of which was acquired from private ownership after 1936 and before 1951. Service in connection with the operation of such transportation system (including any additions acquired after 1950) constitutes covered transportation service commencing with the first day of the third calendar quarter following the calendar quarter in which the addition to the existing transportation system was acquired, if such service is performed by an employee who became an employee of the State or political subdivision in connection with and at the time of its acquisition from private ownership of such addition and who before the acquisition of such addition rendered service in employment in connection with the operation of the addition so acquired by such State or political subdivision. However, service performed by such employee in connection with the operation of the transportation system does not constitute covered transportation service if, on the first day of the third calendar quarter following the calendar quarter in which the addition was acquired, such service is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees who became employees of the State or political subdivision in connection with and at the time of its acquisition of such addition.

(c) *Transportation systems acquired after 1950.* All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system constitutes covered transportation service if the transportation system was not operated by the State or political subdivision before 1951 and, at the time of its first acquisition after 1950 from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(d) *Definitions.* For purposes of this section:

(1) The term ''general retirement system'' means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term does not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(2) A transportation system or a part thereof is considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by the employees in connection with the operation of the system or an acquired part thereof constituted employment under the act or under subchapter A of chapter 9 of the Internal Revenue Code of 1939 or was covered by an agreement entered into pursuant to section 218 of the Social Security Act (42 U.S.C. 418), and some of such employees became employees of the State or political subdivision in connection with and at the time of such acquisition.

(3) The term ''political subdivision'' includes an instrumentality of a State, of one or more political subdivisions of a State, or of a State and one or more of its political subdivisions.

(4) The term ''employment'' includes service covered by an agreement entered into pursuant to section 218 of the Social Security Act.

§ 31.3121(k)–1 Waiver of exemption from taxes.

(a) *Who may file a waiver certificate—*(1) *In general.* If services performed in the employ of an organization are excepted from employment under section 3121(b)(8)(B), the organization may file a waiver certificate on Form SS–15, together with a list on Form SS–15a, certifying that it desires to have the Federal old-age, survivors, and disability

insurance system established by title II of the Social Security Act extended to services performed by its employees. (For provisions relating to the exception under section 3121(b)(8)(B), see that section and §31.3121(b)(8)–2.) A certificate in effect under section 1426(1) of the Internal Revenue Code of 1939 on December 31, 1954, remains in effect under, and is subject to the provisions of, section 3121(k). If the period covered by a certificate filed under section 3121(k), or under section 1426(l) of the Internal Revenue Code of 1939, is terminated by an organization, a certificate may not thereafter be filed by the organization under section 3121(k). For regulations relating to certificates filed under section 1426(l) of the Internal Revenue Code of 1939, see 26 CFR (1939) 408.216 (Regulations 128).

(2) *Organizations having two separate groups of employees.* If an organization is eligible to file a certificate under section 3121(k), and the organization employs both individuals who are in positions covered by a pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof and individuals who are not in such positions, the organization shall divide its employees into two separate groups for purposes of any certificate filed after August 28, 1958. One group shall consist of all employees who are in positions covered by such a fund or system and (i) are members of such fund or system, or (ii) are not members of such fund or system but are eligible to become members thereof. The other group shall consist of all remaining employees. An organization which has so divided its employees into two groups may file a certificate after August 28, 1958, with respect to the employees in either group, or may file a separate certificate after such date with respect to employees in each group.

(3) *Certificates filed before September 14, 1960.* A certificate filed before September 14, 1960, is void unless at least two-thirds of the employees, determined on the basis of the facts which existed as of the date the certificate was filed, concurred in the filing of the certificate, and the organization certified to such concurrence in the certificate. All individuals who were employees of the organization within the meaning of section 3121(d) (see §31.3121(d)–1) shall be included in determining whether two-thirds of the employees of the organization concurred in the filing of the certificate; except that there shall not be included (i) those employees who at the time of the filing of the certificate were performing for the organization services only of the character specified in paragraphs (8)(A), (10)(B), and (13) of section 3121(b) (see §§31.3121(b)(8)–1, 31.3121(b)(10)–2, and 31.3121(b)(13)–1, respectively), (ii) those alien employees who at the time of the filing of the certificate were performing services for such organization under an arrangement which provided for the performance only of services outside the United States not on or in connection with an American vessel or American aircraft, and (iii) in connection with certificates filed after August 28, 1958, those employees who at the time of the filing of the certificate were in a group to which such certificate was not applicable because of the provisions of section 3121(k)(1)(E). (See paragraph (a)(2) of this section.) As used in this subparagraph, the term ''alien employee'' does not include an employee who was a citizen of the Commonwealth of Puerto Rico or a citizen of the Virgin Islands, and the term ''United States'' includes Puerto Rico and the Virgin Islands.

(b) *Execution and amendment of certificate*—(1) *Use of prescribed forms.* An organization filing a certificate pursuant to section 3121(k) shall use Form SS–15, in accordance with the regulations and instructions applicable thereto. The certificate may be filed only if it is accompanied by a list on Form SS–15a, containing the signature, address, and social security account number, if any, of each employee, if any, who concurs in the filing of the certificate. (For provisions relating to account numbers, see §31.6011(b)–2.) If no employee concurs in a certificate filed after September 13, 1960, that fact should be stated on the Form SS–15a. (For provisions relating to the concurrence of employees in certificates filed before September 14, 1960, see paragraph (a)(3) of this section.)

(2) *Amendment of list on Form SS–15a*—(i) *Certificate filed after August 28, 1958.* The list on Form SS–15a accompanying a certificate filed after August 28, 1958, under section 3121(k), may be amended at any time before the expiration of the twenty-fourth month following the calendar quarter in which the certificate is filed, by filing a supplemental list or lists on Form SS–15a Supplement, containing the signature, address, and social security account number, if any, of each additional employee who concurs in the filing of the certificate.

(ii) *Certificate filed before August 29, 1958.* The list on Form SS–15a which accompanied a certificate filed before August 29, 1958, under section 3121(k) or under section 1426(l) of the Internal Revenue Code of 1939, may be amended by filing a supplemental list or lists on Form SS–15a Supplement at any time after August 31, 1954, and before the expiration of the twenty-fourth month following the first calendar quarter for which the certificate was in effect, or before January 1, 1959, whichever is the later.

(3) *Where to file certificate or amendment.* The certificate on Form SS–15 and accompanying list on Form SS–15a of an organization which is required to make a return on Form 941 pursuant to §31.6011(a)–1 or §31.6011(a)–4 shall be filed with the internal revenue officer designated in the instructions applicable to Form SS–15 and Form SS–15a. The Form SS–15 and Form SS–15a of any other organization shall be filed in accordance with the provisions of §31.6091–1 which are otherwise applicable to returns. Each Form SS–15a Supplement shall be filed with the internal revenue officer with whom the related Forms SS–15 and SS–15a were filed.

(c) *Effect of waiver*—(1) *In general.* The exception from employment under section 3121(b)(8)(B) does not apply to services with respect to which a certificate, filed pursuant to section 3121(k), or section 1426(l) of the Internal Revenue Code of 1939, is in effect. (See §§31.3121(b)(8) and 31.3121(b)(8)–2). If an organization has divided its employees into two groups, as set forth in paragraph (a)(2) of this section, a certificate filed with respect to either group shall have no effect with respect to services performed by an employee as a member of the other group; and the provisions of this subparagraph shall apply as if each group were separately employed by a different organization. A certificate is not terminated if the organization loses its exemption under section 501(a) as an organization of the character described in section 501(c)(3), but continues effective with respect to any subsequent periods during which the organization is so exempt. The certificate of an organization may be in effect without being applicable to services performed by every employee of the organization. Subparagraph (2) of this paragraph relates to the beginning of the period for which a certificate is in effect. Subparagraph (3) of this paragraph relates to the services with respect to which a certificate is in effect. Even though a certificate is in effect with respect to the services of an employee, such services may be excepted from employment under some provision of section 3121(b) other than paragraph (8)(B) thereof. For example, service performed in any calendar quarter in the employ of an organization described in section 501(c)(3) and exempt from income tax under section 501(a) is excepted from employment under section 3121(b)(10)(A) if the remuneration for such service is less than $50, regardless of whether the organization files a certificate.

(2) *Beginning of effective period of waiver*—(i) *Certificate filed after July 30, 1965.* A certificate filed after July 30, 1965, by an organization pursuant to section 3121(k) shall be in effect for the period beginning with one of the following dates, which shall be designated by the organization on the certificate:

(a) The first day of the calendar quarter in which the certificate is filed,

(b) The first day of the calendar quarter immediately following the quarter in which the certificate is filed, or

(c) The first day of any calendar quarter preceding the calendar quarter in which the certificate is filed, except that such date may not be earlier than the first day of the 20th calendar quarter preceding the quarter in which such certificate is filed. Thus, a certificate filed in December 1965 may be made effective, pursuant to this paragraph (c)(2)(i)*(c)*, for the period beginning

with the first day of the calendar quarter beginning October 1, 1960, or the first day of any other calendar quarter beginning after October 1, 1960, and before October 1, 1965.

(ii) *Certificate filed after August 28, 1958, and before July 31, 1965.* A certificate filed after August 28, 1958, and before July 31, 1965, by an organization pursuant to section 3121(k) shall be in effect for the period beginning with one of the following dates, which shall be designated by the organization on the certificate:

(a) The first day of the calendar quarter in which the certificate is filed,

(b) The first day of the calendar quarter immediately following the quarter in which the certificate is filed, or

(c) The first day of any calendar quarter preceding the calendar quarter in which the certificate is filed, except that, in the case of a certificate filed before 1960, such date may not be earlier than January 1, 1956, and in the case of a certificate filed after 1959 (but before July 31, 1965), such date may not be earlier than the first day of the fourth calendar quarter preceding the quarter in which the certificate is filed. Thus, a certificate filed in December 1959 may be made effective for the calendar quarter beginning January 1, 1956; but a certificate filed in January 1960 may not be made effective for a calendar quarter beginning before January 1, 1959.

(iii) *Certificate filed after 1956 and before August 29, 1958.* A certificate filed by an organization after 1956 and before August 29, 1958 pursuant to section 3121(k), became effective for the period beginning with one of the following dates, as designated by the organization on the certificate:

(a) The first day of the calendar quarter in which the certificate was filed, or

(b) The first day of the calendar quarter immediately following the quarter in which the certificate was filed.

(iv) *Certificate filed before 1957.* A certificate filed before 1957 pursuant to section 3121(k) became effective for the period beginning with the first day following the close of the calendar quarter in which the certificate was filed. In no case, however, shall a certificate filed under the provisions of section 3121(k) be in effect with respect to services performed before January 1, 1955. (For regulations relating to waiver certificates filed under section 1426(l) of the Internal Revenue Code of 1939, see 26 CFR (1939) 408.216 (Regulations 128).)

(3) *Services to which certificate applies*—(i) *In general.* If an organization's certificate is in effect (see paragraph (c)(2) of this section), the certificate becomes effective with respect to services performed in its employ by each individual *(a)* who enters the employ of the organization after the calendar quarter in which the certificate is filed, as set forth in paragraph (c)(3)(ii) of this section, or *(b)* whose signature appears on the list on Form SS–15a, as set forth in paragraph (c)(3)(iii) of this section, or *(c)* whose signature appears on a Form SS–15a Supplement, as set forth in paragraph (c)(3)(iv) or (v) of this section. The first date on which such a certificate becomes effective with respect to an employee's services shall be the earliest date applicable under this subparagraph. An organization's certificate is not effective with respect to the services of an employee who is in its employ in the calendar quarter in which the certificate is filed and who does not sign Form SS–15a or Form SS–15a Supplement, so long as his employment relationship with the organization, at the close of the calendar quarter in which the certificate is filed and thereafter, continues without interruption.

(ii) *Employee hired after quarter in which certificate is filed.* If an individual enters the employ of an organization on or after the first day following the close of the calendar quarter in which the organization files a certificate pursuant to section 3121(k), the certificate shall be in effect with respect to services performed by the individual in the employ of the organization on and after the day he enters the employ of the organization. A former employee of the organization who is rehired on or after the first day following the close of the calendar quarter in which such a certificate is filed shall be considered to have entered the employ of the organization after such calendar quarter, regardless of whether such individual concurred in the filing of the certificate.

(iii) *Employee who signs Form SS–15a.* A certificate on Form SS–15 filed by an organization pursuant to section 3121(k) shall be in effect with respect to services performed by an individual in the employ of the organization on and after the first day for which the certificate is in effect, if such individual's signature appears on the list on Form SS–15a which accompanies such certificate.

(iv) *Employee who signs Form SS–15a Supplement to concur in certificate filed after August 28, 1958.* If the list on Form SS–15a accompanying a certificate filed after August 28, 1958, by an organization pursuant to section 3121(k) is amended in accordance with paragraph (b)(2)(i) of this section by the filing of a supplemental list on Form SS–15a Supplement, the certificate shall be in effect with respect to the services of each individual whose signature appears on the supplemental list, performed in the employ of the organization—

(a) On and after the first day for which the certificate is in effect, if the supplemental list is filed on or before the last day of the month following the calendar quarter in which the certificate is filed, or

(b) On and after the first day of the calendar quarter in which the supplemental list is filed, if such list is filed after the close of the first month following the calendar quarter in which the certificate is filed.

(v) *Employee who signed Form SS–15a Supplement to concur in certificate filed before August 29, 1958.* If the list on Form SS–15a which accompanied a certificate filed before August 29, 1958, by an organization pursuant to section 3121(k), or pursuant to section 1426(l) of the Internal Revenue Code of 1939, was amended in accordance with paragraph (b)(2)(ii) of this section by the filing of a supplemental list on Form SS–15a Supplement, the certificate shall be in effect with respect to the services of each individual whose signature appears on the supplemental list, performed in the employ of the organization—

(a) On and after the first day for which the certificate is in effect, if the supplemental list was filed on or before the last day of the month following the first calendar quarter for which the certificate was in effect, or

(b) On and after the first day following the close of the calendar quarter in which the supplemental list was filed, but not before January 1, 1955, if such list was filed after the close of the first month following the first calendar quarter for which the certificate is in effect.

(4) *Administrative provisions applicable when certificate has retroactive effect.* For purposes of computing interest and for purposes of section 6651 (relating to addition to tax for failure to file tax return), in any case in which a certificate filed pursuant to section 3121(k)(1) is effective pursuant to section 3121(k)(1)(B)(iii) (as originally enacted and as amended by section 316(a) of the Social Security Amendments of 1965) for one or more calendar quarters prior to the quarter in which the certificate is filed, the due date for the return and payment of the tax for such prior calendar quarters resulting from the filing of such certificate shall be the last day of the calendar month following the calendar quarter in which the certificate is filed. The statutory period for the assessment of the tax for such prior calendar quarters shall not expire before the expiration of 3 years from such due date. A waiver certificate (as described in section 3121(k)(1) and this section) furnished to the Internal Revenue Service after February 12, 1976, shall not be considered filed with the Internal Revenue Service unless interest paid to the organization (or credited to its account) in connection with a claim for credit or refund of taxes, which claim was based upon the exemption from taxes the organization is waiving by such certificate, is repaid. The interest so paid must be repaid only to the extent such interest relates to any taxes for which the organization or its employees would be liable by reason of the waiver certificate. Furthermore, when a waiver certificate has been filed prior to the payment of a refund of taxes based upon the exemption from taxes the organization in waiving, no credit or refund in respect of the taxes for which the exemption has been waived shall be allowed. If repayment of the interest is made as required by this subparagraph, on or before the last

day of the calendar month following the calendar quarter in which the certificate is furnished to the Internal Revenue Service, such certificate shall be considered to have been filed on the date it was originally furnished. If repayment occurs after that day, such certificate shall be considered to have been filed on the date of the repayment. References in this subparagraph to a waiver certificate refer also to any supplement to such a certificate.

(d) *Termination of waiver by organization.* (1) The period for which a certificate filed pursuant to section 3121(k), or pursuant to section 1426(l) of the Internal Revenue Code of 1939, is in effect may be terminated by the organization upon giving to the district director with whom the organization is filing returns 2 years' advance notice in writing of its desire to terminate the effect of the certificate at the end of a specified calendar quarter, but only if, at the time of the receipt of such notice by the district director, the certificate has been in effect for a period of not less than 8 years. The notice of termination shall be signed by the president or other principal officer of the organization. Such notice shall be dated and shall show (i) the title of the officer signing the notice, (ii) the name, address, and identification number of the organization, (iii) the district director with whom the certificate was filed, (iv) the date on which the certificate became effective, and (v) the date on which the certificate is to be terminated. No particular form is prescribed for the notice of termination.

(2) In computing the effective period which must precede the date of receipt of the notice of termination, there shall be disregarded any period or periods as to which the organization was not exempt from income tax under section 501(a) as an organization of the character described in section 501(c)(3) or under section 101(6) of the Internal Revenue Code of 1939.

(3) The notice of termination may be revoked by the organization by giving, prior to the close of the calendar quarter specified in the notice of termination, a written notice of such revocation. The notice of revocation shall be filed with the district director with whom the notice of termination was filed. The notice of revocation shall be signed by the president or other principal officer of the organization. Such notice shall be dated and shall show (i) the title of the officer signing the notice, (ii) the name, address, and identification number of the organization, and (iii) the date of the notice of termination to be revoked. No particular form is prescribed for the notice of revocation.

(e) *Termination of waiver by Commissioner.* (1) The period for which a certificate filed pursuant to section 3121(k), or pursuant to section 1426(l) of the Internal Revenue Code of 1939, is in effect may be terminated by the Commissioner, with the prior concurrence of the Secretary of Health, Education, and Welfare, upon a finding by the Commissioner that the organization has failed to comply substantially with the requirements applicable with respect to the taxes imposed by the act (or the corresponding provisions of prior law) or is no longer able to comply therewith. The Commissioner shall give the organization not less than 60 days' advance notice in writing that the period covered by the certificate will terminate at the end of the calendar quarter specified in the notice of termination.

(2) The notice of termination may be revoked by the Commissioner, with the prior concurrence of the Secretary of Health, Education, and Welfare, by giving written notice of revocation to the organization before the close of the calendar quarter specified in the notice of termination.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6983, 33 FR 18018, Dec. 4, 1968; T.D. 7012, 34 FR 7693, May 15, 1969; T.D. 7476, 42 FR 17874, Apr. 4, 1977]

§31.3121(k)–2 Waivers of exemption; original effective date changed retroactively.

(a) *Certificates filed after 1955 and before August 29, 1958.* (1) An organization which filed a certificate under section 3121(k) after 1955 and before August 29, 1958, may file a request on Form SS–15b at any time before 1960 to have such certificate made effective, with respect to the services of individuals who concurred in the filing of such certificate (initially, or by signing a supplemental