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services performed by an employee for his employer which is specifically excepted from wages under section 3401(a).

(2) The exception attaches to the remuneration for services performed by an employee and not to the employee as an individual; that is, the exception applies only to the remuneration in an excepted category.

Example. A is an individual who is employed part time by B to perform domestic service in his home (see §31.3401(a)(3)–1). A is also employed by C part time to perform services as a clerk in a department store owned by him. While no withholding is required with respect to A's remuneration for services performed in the employ of B (the remuneration being excluded from wages), the exception does not embrace the remuneration for services performed by A in the employ of C and withholding is required with respect to the wages for such services.

(3) For provisions relating to the circumstances under which remuneration which is excepted is nevertheless deemed to be wages, and relating to the circumstances under which remuneration which is not excepted is nevertheless deemed not to be wages, see §31.3402(e)–1.

(4) For provisions relating to payments with respect to which a voluntary withholding agreement is in effect, which are not defined as wages in section 3401(a) but which are nevertheless deemed to be wages, see §§31.3401(a)–3 and 31.3402(p)–1.

(b) *Fees paid a public official.* (1) Authorized fees paid to public officials such as notaries public, clerks of courts, sheriffs, etc., for services rendered in the performance of their official duties are excepted from wages and hence are not subject to withholding. However, salaries paid such officials by the Government, or by a Government agency or instrumentality, are subject to withholding.

(2) Amounts paid to precinct workers for services performed at election booths in State, county, and municipal elections and fees paid to jurors and witnesses are in the nature of fees paid to public officials and therefore are not subject to withholding.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6654, 28 FR 5251, May 28, 1963; T.D. 7096, 36 FR 5216, Mar. 18, 1971]

§31.3401(a)–3 Amounts deemed wages under voluntary withholding agreements.

(a) *In general.* Notwithstanding the exceptions to the definition of wages specified in section 3401(a) and the regulations thereunder, the term ''wages'' includes the amounts described in paragraph (b)(1) of this section with respect to which there is a voluntary withholding agreement in effect under section 3402(p). References in this chapter to the definition of wages contained in section 3401(a) shall be deemed to refer also to this section (§31.3401(a)–3).

(b) *Remuneration for services.* (1) Except as provided in subparagraph (2) of this paragraph, the amounts referred to in paragraph (a) of this section include any remuneration for services performed by an employee for an employer which, without regard to this section, does not constitute wages under section 3401(a). For example, remuneration for services performed by an agricultural worker or a domestic worker in a private home (amounts which are specifically excluded from the definition of wages by section 3401(a) (2) and (3), respectively) are amounts with respect to which a voluntary withholding agreement may be entered into under section 3402(p). See §§31.3401(c)–1 and 31.3401(d)–1 for the definitions of ''employee'' and ''employer''.

(2) For purposes of this paragraph, remuneration for services shall not include amounts not subject to withholding under §31.3401(a)–1(b)(12) (relating to remuneration for services performed by a permanent resident of the Virgin Islands), §31.3401(a)–2(b) (relating to fees paid to a public official), section 3401(a)(5) (relating to remuneration for services for foreign government or international organization), section 3401(a)(8)(B) (relating to remuneration for services performed in a possession of the United States (other than Puerto Rico) by citizens of the United States), section 3401(a)(8)(C) (relating to remuneration for services performed in Puerto Rico by citizens of the United States), section 3401(a)(11) (relating to remuneration other than in cash for service not in the course of employer's trade or business), section 3401(a)(12) (relating to payments from

or to certain tax-exempt trusts, or under or to certain annuity plans or bond purchase plans), section 3401(a)(14) (relating to group-term life insurance), section 3401(a)(15) (relating to moving expenses), or section 3401(a)(16)(A) (relating to tips paid in any medium other than cash).

[T.D. 7096, 36 FR 5216, Mar. 18, 1971]

§ 31.3401(a)–4 Reimbursements and other expense allowance amounts.

(a) *When excluded from wages.* If a reimbursement or other expense allowance arrangement meets the requirements of section 62(c) of the Code and §1.62–2 and the expenses are substantiated within a reasonable period of time, payments made under the arrangement that do not exceed the substantiated expenses are treated as paid under an accountable plan and are not wages. In addition, if both wages and the reimbursement or other expense allowance are combined in a single payment, the reimbursement or other expense allowance must be identified either by making a separate payment or by specifically identifying the amount of the reimbursement or other expense allowance.

(b) *When included in wages*—(1) *Accountable plans*—(i) *General rule.* Except as provided in paragraph (b)(1)(ii) of this section, if a reimbursement or other expense allowance arrangement satisfies the requirements of section 62(c) and §1.62–2, but the expenses are not substantiated within a reasonable period of time or amounts in excess of the substantiated expenses are not returned within a reasonable period of time, the amount paid under the arrangement in excess of the substantiated expenses is treated as paid under a nonaccountable plan, is included in wages, and is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period.

(ii) *Per diem or mileage allowances.* If a reimbursement or other expense allowance arrangement providing a per diem or mileage allowance satisfies the requirements of section 62(c) and §1.62–2, but the allowance is paid at a rate for each day or mile of travel that exceeds the amount of the employee's expenses deemed substantiated for a day or mile of travel, the excess portion is treated as paid under a nonaccountable plan and is included in wages. In the case of a per diem or mileage allowance paid as a reimbursement, the excess portion is subject to withholding and payment of employment taxes when paid. In the case of a per diem or mileage allowance paid as an advance, the excess portion is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the expenses with respect to which the advance was paid (i.e., the days or miles of travel) are substantiated. The Commissioner may, in his discretion, prescribe special rules in pronouncements of general applicability regarding the timing of withholding and payment of employment taxes on per diem and mileage allowances.

(2) *Nonaccountable plans.* If a reimbursement or other expense allowance arrangement does not satisfy the requirements of section 62(c) and §1.62–2 (e.g., the arrangement does not require expenses to be substantiated or require amounts in excess of the substantiated expenses to be returned), all amounts paid under the arrangement are treated as paid under a nonaccountable plan, are included in wages, and are subject to withholding and payment of employment taxes when paid.

(c) *Withholding rate.* Employers may add any payments made under reimbursement or other expense allowance arrangements that are subject to income tax withholding to the employee's regular wages for a payroll period and compute withholding taxes on the total. Alternatively, the employer may withhold income tax from the reimbursement or other expense allowance at the flat 20-percent rate applicable to supplemental wages, provided the employer withholds income tax from the employee's regular wages and provided the reimbursement or allowance is paid separately (or separately identified if wages and reimbursement amounts are combined in a single payment). See §31.3401 (g)–1 regarding supplemental wage payments.

(d) *Effective dates.* This section generally applies to payments made under