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reimbursement or other expense allowance arrangements received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990. Paragraph (b)(1)(ii) of this section applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after January 1, 1991, with respect to expenses paid or incurred on or after January 1, 1991.

[T.D. 8324, 55 FR 51698, Dec. 17, 1990]

§31.3401(a)(1)–1 Remuneration of members of the Armed Forces of the United States for active service in combat zone or while hospitalized as a result of such service.

Remuneration paid for active service as a member of the Armed Forces of the United States performed in a month during any part of which such member served in a combat zone (as determined under section 112) or is hospitalized at any place as a result of wounds, disease, or injury incurred while serving in such a combat zone is excepted from wages and is, therefore, not subject to withholding. The exception with respect to hospitalization is applicable, however, only if during all of such month there are combatant activities in some combat zone (as determined under section 112). See §1.112–1 of this chapter (Income Tax Regulations).

§31.3401(a)(2)–1 Agricultural labor.

The term ''wages'' does not include remuneration for services which constitute agricultural labor as defined in section 3121(g). For regulations relating to the definition of the term ''agricultural labor'', see §31.3121(g)–1.

§31.3401(a)(3)–1 Remuneration for domestic service.

(a) *In a private home.* (1) Remuneration paid for services of a household nature performed by an employee in or about a private home of the person by whom he is employed is excepted from wages and hence is not subject to withholding. A private home is a fixed place of abode of an individual or family. A separate and distinct dwelling unit maintained by an individual in an apartment house, hotel, or other similar establishment may constitute a private home. If a dwelling house is used primarily as a boarding or lodging house for the purpose of supplying board or lodging to the public as a business enterprise, it is not a private home, and the remuneration paid for services performed therein is not within the exception.

(2) In general, services of a household nature in or about a private home include services performed by cooks, waiters, butlers, housekeepers, governesses, maids, valets, baby sitters, janitors, laundresses, furnacemen, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use.

(b) *In a local college club or local chapter of a college fraternity or sorority.* (1) Remuneration paid for services of a household nature performed by an employee in or about the club rooms or house of a local college club or of a local chapter of a college fraternity or sorority by which he is employed is excepted from wages and hence is not subject to withholding. A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter. If the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for the purpose of supplying board or lodging to students or the public as a business enterprise, the remuneration paid for services performed therein is not within the exception.

(2) In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include services rendered by cooks, waiters, butlers, maids, janitors, laundresses, furnacemen, handymen, gardeners, housekeepers, and housemothers.

(c) *Remuneration not excepted.* Remuneration paid for services not of a household nature, such as services performed as a private secretary, tutor, or librarian, even though performed in the employer's private home or in a local college club or local chapter of a college fraternity or sorority, is not within the exception. Remuneration paid for services of a household nature is not within the exception if performed in or about rooming, or lodging houses,

boarding houses, clubs (except local college clubs), hotels, hospitals, eleemosynary institutions, or commercial offices or establishments.

§ 31.3401(a)(4)–1 Cash remuneration for service not in the course of employer's trade or business.

(a) Cash remuneration paid for services not in the course of the employer's trade or business performed by an employee for an employer in a calendar quarter is excepted from wages and hence is not subject to withholding unless—

(1) The cash remuneration paid for such services performed by the employee for the employer in the calendar quarter is $50 or more; and

(2) Such employee is regularly employed in the calendar quarter by such employer to perform such services.

Unless the tests set forth in both paragraphs (a)(1) and (2) of this section are met, cash remuneration for service not in the course of the employer's trade or business is excluded from wages. (For provisions relating to the exclusion from wages of remuneration paid in any medium other than cash for services not in the course of the employer's trade or business, see § 31.3401(a)(11)–1.)

(b) The term ''services not in the course of the employer's trade or business'' includes services that do not promote or advance the trade or business of the employer. As used in this section, the term does not include service not in the course of the employer's trade or business performed on a farm operated for profit or domestic service in a private home, local college club, or local chapter of a college fraternity or sorority. Accordingly, this exception does not apply with respect to remuneration which is excepted from wages under section 3401(a)(2) or section 3401(a)(3) (see §§ 31.3401(a)(2)–1 and 31.3401(a)(3)–1, respectively). Remuneration paid for service performed for a corporation does not come within the exception.

(c) The test relating to cash remuneration of $50 or more is based on the remuneration earned during a calendar quarter rather than on the remuneration paid in a calendar quarter. However, for purposes of determining whether the test is met, it is also required that the remuneration be paid, although it is immaterial when the remuneration is paid. Furthemore, in determining whether $50 or more has been paid for service not in the course of the employer's trade or business, only cash remuneration for such service shall be taken into account. The term ''cash remuneration'' includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as lodging, food, or other goods or commodities, is disregarded in determining whether the cash-remuneration test is met.

(d) For purposes of this exception, an individual is deemed to be regularly employed by an employer during a calendar quarter only if—

(1) Such individual performs service not in the course of the employer's trade or business for such employer for some portion of the day on at least 24 days (whether or not consecutive) during such calendar quarter; or

(2) Such individual was regularly employed (as determined under paragraph (d)(1) of this section) by such employer in the performance of service not in the course of the employer's trade or business during the preceding calendar quarter.

(e) In determining whether an employee has performed service not in the course of the employer's trade or business on at least 24 days during a calendar quarter, there shall be counted as one day—

(1) Any day or portion thereof on which the employee actually performs such service; and

(2) Any day or portion thereof on which the employee does not perform service of the prescribed character but with respect to which cash remuneration is paid or payable to the employee for such service, 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 service not in the course of the employer's trade or business shall be considered to be engaged in the actual performance of such service on that day. For purposes of this exception, a day is a continuous period