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question shall cease to be classed as an international organization for the purposes of this title.

§ 31.3401(a)(6)–1 Remuneration for services of nonresident alien individuals.

(a) *In general.* All remuneration paid after December 31, 1966, for services performed by a nonresident alien individual, if such remuneration otherwise constitutes wages within the meaning of § 31.3401(a)–1 and if such remuneration is effectively connected with the conduct of a trade or business within the United States, is subject to withholding under section 3402 unless excepted from wages under this section. In regard to wages paid under this section after February 28, 1979, the term ''nonresident alien individual'' does not include a nonresident alien individual treated as a resident under section 6013 (g) or (h).

(b) *Remuneration for services performed outside the United States.* Remuneration paid to a nonresident alien individual (other than a resident of Puerto Rico) for services performed outside the United States is excepted from wages and hence is not subject to withholding.

(c) *Remuneration for services of residents of Canada or Mexico who enter and leave the United States at frequent intervals*—(1) *Transportation service.* Remuneration paid to a nonresident alien individual who is a resident of Canada or Mexico and who, in the performance of his duties in transportation service between points in the United States and points in such foreign country, enters and leaves the United States at frequent intervals, is excepted from wages and hence is not subject to withholding. This exception applies to personnel engaged in railroad, bus, truck, ferry, steamboat, aircraft, or other transportation services and applies whether the employer is a domestic or foreign entity. Thus, the remuneration of a nonresident alien individual who is a resident of Canada and an employee of a domestic railroad, for services as a member of the crew of a train operating between points in Canada and points in the United States, is not subject to withholding under section 3402.

(2) *Service on international projects.* Remuneration paid to a nonresident alien individual who is a resident of Canada or Mexico and who, in the performance of his duties in connection with the construction, maintenance, or operation of a waterway, viaduct, dam, or bridge traversed by, or traversing, the boundary between the United States and Canada or the boundary between the United States and Mexico, as the case may be, enters and leaves the United States at frequent intervals, is excepted from wages and hence is not subject to withholding. Thus, the remuneration of a nonresident alien individual who is a resident of Canada, for services as an employee in connection with the construction, maintenance, or operation of the Saint Lawrence Seaway and who, in the performance of such services, enters and leaves the United States at frequent intervals, is not subject to withholding under section 3402.

(3) *Limitation.* The exceptions provided by this paragraph do not apply to the remuneration of a resident of Canada or of Mexico who is employed wholly within the United States as, for example, where such a resident is employed to perform service at a fixed point or points in the United States, such as a factory, store, office, or designated area or areas within the United States, and who commutes from his home in Canada or Mexico, in the pursuit of his employment within the United States.

(4) *Certificate required.* In order for an exception provided by this paragraph to apply for any taxable year, the nonresident alien employee must furnish his employer a statement in duplicate for the taxable year setting forth the employee's name, address, and taxpayer identifying number, and certifying (i) that he is not a citizen or resident of the United States, (ii) that he is a resident of Canada or Mexico, as the case may be, and (iii) that he expects to meet the requirements of paragraph (c)(1) or (2) of this section with respect to remuneration to be paid during the taxable year in respect of which the statement is filed. The statement shall be dated, shall identify the taxable year to which it relates, shall be

signed by the employee, and shall contain, or be verified by, a written declaration that it is made under the penalties of perjury. No particular form is prescribed for this statement. The duplicate copy of each statement filed during any calendar year pursuant to this paragraph shall be forwarded by the employer with, and attached to, the Form 1042S required by paragraph (c) of §1.1461–2 with respect to such remuneration for such calendar year.

(d) *Remuneration for services performed by residents of Puerto Rico.* (1) Remuneration paid for services performed in Puerto Rico by a nonresident alien individual who is a resident of Puerto Rico for an employer (other than the United States or any agency thereof) is excepted from wages and hence is not subject to withholding.

(2) Remuneration paid for services performed outside the United States but not in Puerto Rico by a nonresident alien individual who is a resident of Puerto Rico for an employer (other than the United States or any agency thereof) is excepted from wages and hence is not subject to withholding if such individual does not expect to be a resident of Puerto Rico during the entire taxable year. In order for the exception provided by this subparagraph to apply for any taxable year, the nonresident alien employee must furnish his employer a statement for the taxable year setting forth the employee's name and address and certifying (i) that he is not a citizen or resident of the United States and (ii) that he is a resident of Puerto Rico but does not expect to be a resident of Puerto Rico during the entire taxable year. The statement shall be dated, shall identify the taxable year to which it relates, shall be signed by the employee, and shall contain, or be verified by, a written declaration that it is made under the penalties of perjury. No particular form is prescribed for this statement.

(3) Remuneration paid for services performed outside the United States by a nonresident alien individual who is a resident of Puerto Rico as an employee of the United States or any agency thereof is excepted from wages and hence is not subject to withholding if such individual does not expect to be a resident of Puerto Rico during the entire taxable year. In order for the exception provided by this subparagraph to apply for any taxable year, the nonresident alien employee must furnish his employer a statement for the taxable year setting forth the employee's name and address and certifying (i) that he is not a citizen or resident of the United States and (ii) that he is a resident of Puerto Rico but does not expect to be a resident of Puerto Rico during the entire taxable year. This statement shall be dated, shall identify the taxable year to which it relates, shall be signed by the employee, and shall contain, or be verified by, a written declaration that it is made under the penalties of perjury. No particular form is prescribed for this statement.

(e) *Exemption from income tax for remuneration paid for services performed before January 1, 2001.* Remuneration paid for services performed within the United States by a nonresident alien individual before January 1, 2001, is excepted from wages and hence is not subject to withholding if such remuneration is, or will be, exempt from income tax imposed by chapter 1 of the Internal Revenue Code by reason of a provision of the Internal Revenue Code or an income tax convention to which the United States is a party. In order for the exception provided by this paragraph to apply for any taxable year, the nonresident alien employee must furnish his employer a statement in duplicate for the taxable year setting forth the employee's name, address, and taxpayer identifying number, and certifying (1) that he is not a citizen or resident of the United States, (2) that the remuneration to be paid to him during the taxable year is, or will be, exempt from the tax imposed by chapter 1 of the Code, and (3) the reason why such remuneration is so exempt from tax. If the remuneration is claimed to be exempt from tax by reason of a provision of an income tax convention to which the United States is a party, the statement shall also indicate the provision and tax convention under which the exemption is claimed, the country of which the employee is a resident, and sufficient facts to justify the claim to exemption. The statement shall be dated, shall identify the taxable year for which it is

to apply and the remuneration to which it relates, shall be signed by the employee, and shall contain, or be verified by, a written declaration that it is made under the penalties of perjury. No particular form is prescribed for this statement. The duplicate copy of each statement filed during any calendar year pursuant to this paragraph shall be forwarded by the employer with, and attached to, the Form 1042S required by paragraph (c) of §1.1461–2 with respect to such remuneration for such calendar year.

(f) *Exemption from income tax for remuneration paid for services performed after December 31, 2000.* Remuneration paid for services performed within the United States by a nonresident alien individual after December 31, 2000, is excepted from wages and hence is not subject to withholding if such remuneration is, or will be, exempt from the income tax imposed by chapter 1 of the Internal Revenue Code by reason of a provision of the Internal Revenue Code or an income tax convention to which the United States is a party. An employer may rely on a claim that the employee is entitled to an exemption from tax if it complies with the requirements of §1.1441–1(e)(1)(ii) of this chapter (for a claim based on a provision of the Internal Revenue Code) or §1.1441–4(b)(2) of this chapter (for a claim based on an income tax convention).

[T.D. 6908, 31 FR 16775, Dec. 31, 1966, as amended by T.D. 7670, 45 FR 6932, Jan. 31, 1980; T.D. 7977, 49 FR 36836, Sept. 20, 1984; T.D. 8734, 62 FR 53493, Oct. 14, 1997; T.D. 8804, 63 FR 72189, Dec. 31, 1998; T.D. 8856, 64 FR 73412, Dec. 30, 1999]

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53493, Oct. 14, 1997, §31.3401(a)(6)–1 was amended by revising the section heading; revising the paragraph heading and first sentence of paragraph (e); adding paragraph (f); and removing the authority citation at the end of the section, effective Jan. 1, 1999. By T.D. 8804, 63 FR 72183, Dec. 31, 1998, the effective date was delayed until Jan. 1, 2000, and paragraph (e) heading and first sentence were amended by removing ''January 1, 1999'' and adding ''January 1, 2000'', and in paragraph (f) heading and first sentence, by removing ''December 31, 1998'' and adding ''December 31, 1999'', effective Jan. 1, 2000. By T.D. 8856, 64 FR 73408, Dec. 30, 1999, the effective date was delayed until Jan. 1, 2001, and paragraph (e) heading and first sentence were amended by removing ''January 1, 2000'' and adding ''January 1, 2001'', and in paragraph (f) heading and first sentence, by removing ''December 31, 1999'' and adding ''December 31, 2000'', effective Jan. 1, 2001. For the convenience of the user, the superseded text is set forth as follows:

§ 31.3401(a)(6)–1 Remuneration for services of nonresident alien individuals paid after December 31, 1966.

* * * * *

(e) *Income exempt from income tax.* Remuneration paid for services performed within the United States by a nonresident alien individual is excepted from wages and hence is not subject to withholding if such remuneration is, or will be, exempt from the income tax imposed by chapter 1 of the Code by reason of a provision of the Internal Revenue Code or an income tax convention to which the United States is a party. * * *

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(Secs. 1441(c)(4) (80 Stat. 1553; 26 U.S.C. 1441(c)(4)), 3401(a)(6) (80 Stat. 1554; 26 U.S.C. 3401(a)(6)), and 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954)

§ 31.3401(a)(6)–1A Remuneration for services of certain nonresident alien individuals paid before January 1, 1967.

(a) Except in the case of certain nonresident alien individuals who are residents of Canada, Mexico, or Puerto Rico or individuals who are temporarily present in the United States as nonimmigrants under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101), as amended, remuneration for services performed by nonresident alien individuals does not constitute wages subject to withholding under section 3402. For withholding of income tax on remuneration paid for services performed within the United States in the case of nonresident alien individuals generally, see §1.1441–1 and following of this chapter (Income Tax Regulations).

(b) Remuneration paid to nonresident aliens who are residents of a contiguous country (Canada or Mexico) and who enter and leave the United States at frequent intervals is not excepted from wages under section 3401(a)(6). See, however, §31.3401(a)(7)–1, relating