AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

66 Stat. 166; sec. 109, Act of Sept. 21, 1961, 75 Stat. 534]

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6654, 28 FR 5251, May 28, 1963; T.D. 6727, 29 FR 5869, May 5, 1964; T.D. 6908, 31 FR 16775, Dec. 31, 1966]

§ 31.3401(a)(7)–1 Remuneration paid before January 1, 1967, for services performed by nonresident alien individuals who are residents of a contiguous country and who enter and leave the United States at frequent intervals.

(a) *Transportation service.* Remuneration paid to nonresident aliens who are residents of a contiguous country (Canada or Mexico) and who, in the performance of their duties in transportation service between points in the United States and points in a contiguous country, enter and leave 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, ferry, steamboat, and aircraft 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.

(b) *Service on international projects.* Remuneration paid to nonresident aliens who are residents of a contiguous country (Canada or Mexico) and who, in the performance of their 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, enter and leave 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.

(c) *Limitation on application of section.* The exception provided by this section has no application 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.

(d) *Certificate required.* In order for the exception to apply, the nonresident alien employee must furnish his employer a statement setting forth the employee's name and address and certifying (1) that he is not a citizen of the United States, (2) that he is a resident of Canada or Mexico, as the case may be, and (3) the approximate period of time during which he has had such status. Such statement shall be dated, 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) *Effective date.* This section shall not apply with respect to remuneration paid after December 31, 1966. For rules with respect to such remuneration see § 31.3401(a)(6)–1.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6908, 31 FR 16776, Dec. 31, 1966]

§ 31.3401(a)(8)(A)–1 Remuneration for services performed outside the United States by citizens of the United States.

(a) *Remuneration excluded from gross income under section 911.* (1) (i) Remuneration paid for services performed outside the United States for an employer (other than the United States or any agency thereof) by a citizen of the United States does not constitute wages and hence is not subject to withholding, if at the time of payment it is reasonable to believe that such remuneration will be excluded from gross income under the provisions of section 911. The reasonable belief contemplated by the statute may be based upon any

evidence reasonably sufficient to induce such belief, even though such evidence may be insufficient upon closer examination by the district director or the courts finally to establish that the remuneration is excludable from gross income under the provisions of section 911. The reasonable belief shall be based upon the application of section 911 and the regulations thereunder in Part 1 of this chapter (Income Tax Regulations).

(ii) Remuneration paid by an employer to an employee constitutes wages, and hence is subject to withholding only to the extent that the remuneration is expected to exceed the aggregate amount which is excludable from the employee's gross income under section 911(a). For amounts paid after December 31, 1984, the determination of the amount subject to withholding shall be made by applying the excludable amount, on a pro rata basis, to each payment of remuneration to the employee. For this purpose, an employer is not required to ascertain information with respect to amounts received by his employee from any other source; but, if the employer has such information, he shall take it into account in determining whether the earned income of the employee is in excess of the applicable limitation. For purposes of section 911(d)(5) and §1.911–2(c), relating to an employee who states to the authorities of a foreign country that he is not a resident of that country, the employer is not required to ascertain whether such a statement has been made; but if an employer knows that such a statement has been made, he shall presume that the employee is not a bona fide resident of that country, unless the employer also knows that the authorities of the foreign country have determined, notwithstanding the statement that the employee is a resident of that country. For purposes of section 911(d)(1) or §1.911–2(a) relating to the definition of a qualified individual, the reasonable belief contemplated by the statute may be based on a presumption as set forth in subparagraph (2) or (3) of this paragraph. For purposes of sections 911(a)(2) and 911(c)(2) and §1.911–4(b) and (d)(1), relating to the housing cost amount exclusion and the definition of housing expenses, the reasonable belief contemplated by the statute may be based on the presumption set forth in subparagraph (4) of this paragraph.

(2)(i) The employer may, in the absence of cause for a reasonable belief to the contrary, presume that an employee will maintain a tax home in a foreign country or countries and be a bona fide resident of a foreign country or countries, within the meaning of section 911(d)(1), for an uninterrupted period which includes each taxable year of the employee, or applicable portion thereof, in respect of which the employee properly executes and delivers to the employer a statement that the employee meets or will meet the requirement of §1.911–2(a) relating to maintaining a tax home and a bona fide residence in a foreign country for the taxable year. This statement must set forth the facts alleged as the basis for this determination and contain a declaration by the employee that the statement is made under the penalties of perjury. Sample forms of acceptable statements may be obtained by writing to the Foreign Operations District, Internal Revenue Service, Washington, D.C. 20225 (Form IO–673).

(ii) If the employer was entitled to presume for the two consecutive taxable years immediately preceding an employee's current taxable year that such employee was a bona fide resident of a foreign country or countries for an uninterrupted period which includes such preceding taxable years, he may, if such employee is residing in a foreign country on the first day of such current taxable year, presume, in the absence of cause for a reasonable belief to the contrary, and without obtaining from the employee the statement prescribed in subdivision (i) of this subparagraph, that the employee will be a bona fide resident of a foreign country or countries in such current taxable year.

(3) The employer may, in the absence of cause for a reasonable belief to the contrary, presume that an employee will maintain a tax home in a foreign country or countries and be present in a foreign country or countries during at least 330 full days during any period of twelve consecutive months, within

the meaning of section 911(d)(1), and that such period includes each taxable year of the employee, or applicable portion thereof, in respect of which the employee properly executes and delivers to the employer a statement that the employee meets or will meet the requirements of §1.911–2(a) relating to maintaining a tax home and being physically present in a foreign country for the taxable year. This statement must set forth the facts alleged as the basis for this determination and contain a declaration by the employee that the statement is made under the penalties of perjury. Sample forms of acceptable statements may be obtained by writing to the Foreign Operations District, Internal Revenue Service, Washington, D.C. 20225 (Form IO–673).

(4) The employer may, in the absence of cause for a reasonable belief to the contrary, presume that an employee's housing cost amount will be the amount shown on a statement properly executed and delivered to the employer. This statement must set forth the employee's estimation of the following items: housing expenses (as defined in §1.911–4(b)), the housing cost amount exclusion (as defined in §1.911–4(d)(1)), and the qualifying period (as defined in §1.911–2(a)). The statement must contain a declaration by the employee that it is made under the penalties of perjury. Sample forms of acceptable statements may be obtained by writing to the Foreign Operations District, Internal Revenue Service, Washington, D.C. 20225 (IO–673). The employer may not rely on a statement from an employee if the employer, based on his or her knowledge of housing costs in the vicinity of the employee's tax home (as defined in §1.911–2(b)), believes the employee's housing expenses are lavish or extravagant under the circumstances.

(b) *Remuneration subject to withholding of income tax under law of a foreign country or a possession of the United States.* (1) Remuneration paid for services performed in a foreign country or in a possession of the United States for an employer (other than the United States or any agency thereof) by a citizen of the United States does not constitute wages and hence is not subject to withholding, if at the time of the payment of such remuneration the employer is required by the law of any foreign country or of any possession of the United States to withhold income tax upon such remuneration. This paragraph, insofar as it relates to remuneration paid for services performed in a possession of the United States, applies only with respect to remuneration paid on or after August 9, 1955.

(2) Remuneration is not exempt from withholding under this paragraph if the employer is not required by the law of a foreign country or of a possession of the United States to withhold income tax upon such remuneration. Mere agreements between the employer and the employee whereby the estimated income tax of a foreign country or of a possession of the United States is withheld from the remuneration in anticipation of actual liability under the law of such country or possession will not suffice.

(3) The exemption from withholding provided by this paragraph does not apply by reason of withholding of income tax pursuant to the law of a territory of the United States, of a political subdivision of a possession of the United States, or of a political subdivision of a foreign state.

(4) For provisions relating to remuneration for services performed by a permanent resident of the Virgin Islands, see paragraph (b)(12) of §31.3401(a)–1.

(c) *Limitation on application of section.* This section has no application to the remuneration paid to a citizen of the United States for services performed outside the United States as an employee of the United States or any agency thereof.

(Approved by the Office of Management and Budget under control number 1545—0067)

(Sec. 911, 95 Stat. 194; 26 U.S.C. 911), sec. 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954)

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6697, 28 FR 13745, Dec. 17, 1963; T.D. 8006, 50 FR 2977, Jan. 23, 1985]