

§ 31.3121(a)-1T

26 CFR Ch. I (4-1-10 Edition)

1.7872-15 of this chapter for rules relating to the treatment of split-dollar life insurance arrangements.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 7001, 34 FR 999, Jan. 23, 1969; T.D. 7374, 40 FR 30948, July 24, 1975; T.D. 8276, 54 FR 51027, Dec. 12, 1989; T.D. 8324, 55 FR 51696, Dec. 17, 1990; T.D. 8582, 59 FR 66189, Dec. 23, 1994; T.D. 9092, 68 FR 45361, Sept. 17, 2003]

§ 31.3121(a)-1T Question and answer relating to the definition of wages in section 3121(a) (Temporary).

The following question and answer relates to the definition of wages in section 3121(a) of the Internal Revenue Code of 1954, as amended by section 531(d)(1)(A) of the Tax Reform Act of 1984 (98 Stat. 885):

Q-1: Are fringe benefits included in the definition of “wages” under section 3121(a)?

A-1: Yes, unless specifically excluded from the definition of “wages” pursuant to section 3121(a)(1) through (20). For example, a fringe benefit provided to or on behalf of an employee is excluded from the definition of “wages” if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 117 or 132.

[T.D. 8004, 50 FR 755, Jan. 7, 1985]

§ 31.3121(a)-2 Wages; when paid and received.

(a) In general, wages are received by an employee at the time that they are paid by the employer to the employee. Wages are paid by an employer at the time that they are actually or constructively paid unless under paragraph (c) of this section they are deemed to be subsequently paid. For provisions relating to the time when tips received by an employee are deemed paid to the employee, see § 31.3121(q)-1.

(b) Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case the wages must be credited to or set apart for the employee without any substantial limita-

tion or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn upon at any time, and their payment brought within his own control and disposition. For provisions relating to the treatment of deductions from remuneration as payments of remuneration, see § 31.3123-1.

(c)(1) The first \$100 of cash remuneration paid, either actually or constructively, by an employer in any calendar year to an employee for—

(i) Service not in the course of the employer’s trade or business, to which § 31.3121(a)(7)-1 is applicable, shall be deemed to be paid by the employer to the employee at the first moment of time in such calendar year that the sum of such cash payments made within such year is at least \$100; or

(ii) Service performed as a home worker within the meaning of section 3121(d)(3)(C), to which § 31.3121(a)(10)-1 is applicable, shall be deemed to be paid by the employer to the employee at the first moment of time in such calendar year that the sum of such cash payments made within such year is at least \$100.

(2) Cash remuneration paid, either actually or constructively, by an employer in any calendar year to an employee for domestic service in a private home of the employer to which § 31.3121(a)(7)-1 is applicable, and before the sum of the payments of such cash remuneration equals or exceeds the applicable dollar threshold (as defined in section 3121(x)) for such year, shall be deemed to be paid by the employer to the employee at the first moment of time in such calendar year that the sum of such cash payments made within such year equals or exceeds the applicable dollar threshold (as defined in section 3121(x)) for such year.

(3) Cash remuneration paid, either actually or constructively, by an employer in any calendar year to an employee for agricultural labor to which § 31.3121(a)(8)-1 is applicable, and before either of the events described in paragraphs (c)(3)(i) and (c)(3)(ii) of this section has occurred, shall be deemed to be paid by the employer to the employee at the first moment of time in such calendar year that—