

§ 31.3121(b)(8)-2

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

order in the exercise of duties required by such order includes all duties required of the member by the order. The nature or extent of such service is immaterial so long as it is a service which he is directed or required to perform by his ecclesiastical superiors.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7280, 38 FR 18369, July 10, 1973]

§ 31.3121(b)(8)-2 Services in employ of religious, charitable, educational, or certain other organizations exempt from income tax.

(a) Services performed by an employee in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a) are excepted from employment. However, this exception does not apply to services with respect to which a certificate, filed pursuant to section 3121 (k) or (r), or section 1426(1) of the Internal Revenue Code of 1939, is in effect. For provisions relating to the services with respect to which such a certificate is in effect, see §§ 31.3121(k)-1 and 31.3121(r)-1.

(b) For provisions relating to exemption from income tax of an organization described in section 501(c)(3), see Part 1 of this chapter (Income Tax Regulations). For provisions relating to waiver by an organization of its exemption from the taxes imposed by sections 3101 and 3111, see § 31.3121(k)-1. See also § 31.3121(b)(8)-1, relating to services performed by a minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; § 31.3121(b)(10)-1, relating to services for remuneration of less than \$50 for calendar quarter in the employ of certain organizations exempt from income tax; § 31.3121(b)(10)-2, relating to services performed in the employ of a school, college, or university by certain students; and § 31.3121(b)(13)-1, relating to services performed by certain student nurses and hospital interns.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7280, 38 FR 18369, July 10, 1973]

§ 31.3121(b)(9)-1 Railroad industry; services performed by an employee or an employee representative as defined in section 3231.

Services performed by an individual as an “employee” or as an “employee representative”, as those terms are defined in section 3231, are excepted from employment. For definitions of employee and employee representatives, see §§ 31.3231(b)-1 and 31.3231(c)-1.

§ 31.3121(b)(10)-1 Services for remuneration of less than \$50 for calendar quarter in the employ of certain organizations exempt from income tax.

(a) Services performed by an employee in a calendar quarter in the employ of an organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521 are excepted from employment if the remuneration for the services is less than \$50. The test relating to remuneration of \$50 is based on the remuneration earned during a calendar quarter rather than on the remuneration paid in a calendar quarter. The exception applies separately with respect to each organization for which the employee renders services in a calendar quarter. The type of services performed by the employee and the place where the services are performed are immaterial; the statutory tests are the character of the organization in the employ of which the services are performed and the amount of the remuneration for services performed by the employee in the calendar quarter. For provisions relating to exemption from income tax under section 501(a) or 521, see Part 1 of this chapter (Income Tax Regulations).

Example 1. X is a local lodge of a fraternal organization and is exempt from income tax under section 501(a) as an organization of the character described in section 501(c)(8). X has two paid employees, A, who serves exclusively as recording secretary for the lodge, and B, who performs services for the lodge as janitor of its clubhouse. For services performed during the first calendar quarter of 1955 (that is, January 1, 1955, through March 31, 1955, both dates inclusive) A earns a total of \$30. For services performed by certain student quarter B earns \$180. Since the remuneration for the services performed by A during such quarter is less than \$50, all of such services are expected, and the taxes do not

attach with respect to any of the remuneration for such services. Since the remuneration for the services performed by B during such quarter, however, is not less than \$50, none of such services are excepted, and the taxes attached with respect to all of the remuneration for such services (that is, \$180) as and when paid.

Example 2. The facts are the same as in example 1, above, except that on April 1, 1955, A's salary is increased and, for services performed during the calendar quarter beginning on that date (that is, April 1, 1955, through June 30, 1955, both dates inclusive), A earns a total of \$60. Although all of the services performed by A during the first quarter were excepted, none of A's services performed during the second quarter are excepted since the remuneration for such services is not less than \$50. The taxes attach with respect to all of the remuneration for services performed during the second quarter (that is, \$60) as and when paid.

Example 3. The facts are the same as in example 1, above, except that A earns \$120 for services performed during the year 1955, and such amount is paid to him in a lump sum at the end of the year. The services performed by A in any calendar quarter during the year are excepted if the portion of the \$120 attributable to services performed in that quarter is less than \$50. If, however, the portion of the \$120 attributable to services performed in any calendar quarter during the year is not less than \$50, the services during that quarter are not excepted, and the taxes attach with respect to that portion of the remuneration attributable to his services in that quarter.

(b) See § 31.3121(b)(8)-2, relating to services performed in the employ of religious, charitable, educational, and certain other organizations exempt from income tax; § 31.3121(b)(8)-1, relating to services performed by a minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; § 31.3121(b)(10)-2, relating to services performed by certain students in the employ of a school, college, or university or of a nonprofit organization auxiliary to a school, college, or university; and § 31.3121(b)(13)-1, relating to services performed by certain student nurses and hospital interns.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7373, 40 FR 30958, July 24, 1975]

§ 31.3121(b)(10)-2 Services performed by certain students in the employ of a school, college, or university, or of a nonprofit organization auxiliary to a school, college, or university.

(a) *General rule.* (1) Services performed in the employ of a school, college, or university within the meaning of paragraph (c) of this section (whether or not the organization is exempt from income tax) are excepted from employment, if the services are performed by a student within the meaning of paragraph (d) of this section who is enrolled and is regularly attending classes at the school, college, or university.

(2) Services performed in the employ of an organization which is—

(i) Described in section 509(a)(3) and § 1.509(a)-4;

(ii) Organized, and at all times thereafter operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university within the meaning of paragraph (c) of this section; and

(iii) Operated, supervised, or controlled by or in connection with the school, college, or university; are excepted from employment, if the services are performed by a student who is enrolled and regularly attending classes within the meaning of paragraph (d) of this section at the school, college, or university. The preceding sentence shall not apply to services performed in the employ of a school, college, or university of a State or a political subdivision thereof by a student referred to in section 218(c)(5) of the Social Security Act (42 U.S.C. 418(c)(5)) if such services are covered under the agreement between the Commissioner of Social Security and such State entered into pursuant to section 218 of such Act. For the definitions of "operated, supervised, or controlled by", "supervised or controlled in connection with", and "operated in connection with", see paragraphs (g), (h), and (i), respectively, of § 1.509(a)-4.

(b) *Statutory tests.* For purposes of this section, if an employee has the status of a student within the meaning of paragraph (d) of this section, the amount of remuneration for services performed by the employee, the type of services performed by the employee,