

Internal Revenue Service, Treasury

§ 31.3121(g)-1

(c) For provisions relating to services performed outside the United States on or in connection with an American vessel or American aircraft, see paragraph (c)(2) of § 31.3121(b)-3.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6744, 29 FR 8314, July 2, 1964]

§ 31.3121(g)-1 Agricultural labor.

(a) *In general.* (1) The term “agricultural labor” as defined in section 3121(g) includes services of the character described in paragraph (b), (c), (d), (e), and (f) of this section. In general, however, the term does not include services performed in connection with forestry, lumbering, or landscaping.

(2) The term “farm” as used in the regulations in this subpart includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses and other similar structures as are used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures used primarily for other purposes (for example, display, storage, and fabrication of wreaths, corsages, and bouquets) do not constitute “farms”.

(3) For provisions relating to the exception from employment provided with respect to services performed by certain foreign agricultural workers and to services performed before 1959 in connection with the production or harvesting of certain oleoresinous products, see § 31.3121(b)(1)-1. For provisions relating to the exclusion from wages of remuneration paid in any medium other than cash for agricultural labor and to the test for determining whether cash remuneration paid for agricultural labor constitutes wages, see § 31.3121(a)(8)-1.

(b) *Services described in section 3121(g)(1).* (1) Services performed on a farm by an employee of any person in connection with any of the following activities constitute agricultural labor:

- (i) The cultivation of the soil;
- (ii) The raising, shearing, feeding, caring for, training, or management of livestock, bees, poultry, fur-bearing animals, or wildlife; or

(iii) The raising or harvesting of any other agricultural or horticultural commodity.

(2) Services performed in connection with the production or harvesting of maple sap, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry constitute agricultural labor only if such services are performed on a farm. Thus, services performed in connection with the operation of a hatchery, if not operated as part of a poultry or other farm, do not constitute agricultural labor.

(c) *Services described in section 3121(g)(2).* (1) The following services performed by an employee in the employ of the owner or tenant or other operator of one or more farms constitute agricultural labor, provided the major part of such services is performed on a farm:

(i) Services performed in connection with the operation, management, conservation, improvement, or maintenance of any of such farms or its tools or equipment; or

(ii) Services performed in salvaging timber, or clearing land of brush and other debris, left by a hurricane.

(2) The services described in paragraph (c)(1)(i) of this section may include, for example, services performed by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled or semi-skilled workers, which contribute in any way to the conduct of the farm or farms, as such, operated by the person employing them, as distinguished from any other enterprise in which such person may be engaged.

(3) Since the services described in this paragraph must be performed in the employ of the owner or tenant or other operator of the farm, the term “agricultural labor” does not include services performed by employees of a commercial painting concern, for example, which contracts with a farmer to renovate his farm properties.

(d) *Services described in section 3121(g)(3).* Services performed by an employee in the employ of any person in connection with any of the following operations constitute agricultural labor without regard to the place where such services are performed:

§ 31.3121(g)-1

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

(1) The ginning of cotton;

(2) The operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying or storing water for farming purposes; or

(3) The production or harvesting of crude gum (oleoresin) from a living tree or the processing of such crude gum into gum spirits of turpentine and gum rosin, provided such processing is carried on by the original producer of such crude gum.

(e) *Services described in section 3121(g)(4).* (1) Services performed by an employee in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of any agricultural or horticultural commodity constitute agricultural labor if:

(i) Such services are performed by the employee in the employ of an operator of a farm or in the employ of a group of operators of farms (other than a cooperative organization);

(ii) Such services are performed with respect to the commodity in its unmanufactured state; and

(iii) Such operator produced more than one-half of the commodity with respect to which such services are performed during the pay period, or such group of operators produced all of the commodity with respect to which such services are performed during the pay period.

(2) The term “operator of a farm” as used in this paragraph means an owner, tenant, or other person, in possession of a farm and engaged in the operation of such farm.

(3) The services described in this paragraph do not constitute agricultural labor if performed in the employ of a cooperative organization. The term “organization” includes corporations, joint-stock companies, and associations which are treated as corporations pursuant to section 7701(a)(3) of the Internal Revenue Code. For purposes of this paragraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar quarter in which the services involved are performed.

(4) Processing services which change the commodity from its raw or natural state do not constitute agricultural labor. For example the extraction of juices from fruits or vegetables is a processing operation which changes the character of the fruits or vegetables from their raw or natural state and, therefore, does not constitute agricultural labor. Likewise, services performed in the processing of maple sap into maple sirup or maple sugar do not constitute agricultural labor. On the other hand, services rendered in the cutting and drying of fruits or vegetables are processing operations which do not change the character of the fruits or vegetables and, therefore, constitute agricultural labor, if the other requisite conditions are met. Services performed with respect to a commodity after its character has been changed from its raw or natural state by a processing operation do not constitute agricultural labor.

(5) The term “commodity” refers to a single agricultural or horticultural product, for example, all apples are to be treated as a single commodity, while apples and peaches are to be treated as two separate commodities. The services with respect to each such commodity are to be considered separately in determining whether the condition set forth in paragraph (e)(1)(iii) of this section has been satisfied. The portion of the commodity produced by an operator or group of operators with respect to which the services described in this paragraph are performed by a particular employee shall be determined on the basis of the pay period in which such services were performed by such employee.

(6) The services described in this paragraph do not include services performed in connection with commercial canning or commercial freezing or in connection with any commodity after its delivery to a terminal market for distribution for consumption. Moreover, since the services described in this paragraph must be rendered in the actual handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for

Internal Revenue Service, Treasury

§ 31.3121(i)-1

transportation to market, of the commodity, such services do not, for example, include services performed as stenographers, bookkeepers, clerks, and other office employees, even though such services may be in connection with such activities. However, to the extent that the services of such individuals are performed in the employ of the owner or tenant or other operator of a farm and are rendered in major part on a farm, they may be within the provisions of paragraph (c) of this section.

(f) *Services described in section 3121(g)(5).* (1) Service not in the course of the employer's trade or business (see paragraph (a)(1) of § 31.3121(a)(7)-1) or domestic service in a private home of the employer (see paragraph (a)(2) of § 31.3121(a)(7)-1) constitutes agricultural labor if such service is performed on a farm operated for profit. The determination whether remuneration for any such service performed on a farm operated for profit constitutes wages is to be made under § 31.3121(a)(8)-1 rather than under § 31.3121(a)(7)-1. For provisions relating to the exception from employment provided with respect to any such service performed after 1960 by a father or mother in the employ of his or her son or daughter, see § 31.3121(b)(3)-1.

(2) Generally, a farm is not operated for profit if it is occupied by the employer primarily for residential purposes, or is used primarily for the pleasure of the employer or his family such as for the entertainment of guests or as a hobby of the employer or his family.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6744, 29 FR 8315, July 2, 1964]

§ 31.3121(h)-1 American employer.

(a) The term "American employer" means an employer which is (1) the United States or any instrumentality thereof, (2) an individual who is a resident of the United States, (3) a partnership, if two-thirds or more of the partners are residents of the United States, (4) a trust, if all of the trustees are residents of the United States, or (5) a corporation organized under the laws of the United States or of any State. For provisions relating to the terms

"State" and "United States", see § 31.3121(e)-1.

(b) For provisions relating to services performed outside the United States by a citizen of the United States as an employee for an American employer, see paragraph (c)(3) of § 31.3121(b)-3 and paragraph (e) of § 31.3121(b)(4)-1.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6744, 29 FR 8315, July 2, 1964]

§ 31.3121(i)-1 Computation to nearest dollar of cash remuneration for domestic service.

(a) An employer may, for purposes of the act, elect to compute to the nearest dollar any payment of cash remuneration for domestic service described in section 3121(a)(7)(B) (see § 31.3121(a)(7)-1) which is more or less than a whole-dollar amount. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to one dollar. For example, any amount actually paid between \$4.50 and \$5.49, inclusive, may be treated as \$5 for purposes of the taxes imposed by the act. If an employer elects this method of computation with respect to any payment of cash remuneration made in a calendar year for domestic service in his private home, he must use the same method in computing each payment of cash remuneration of more or less than a whole-dollar amount made to each of his employees in such calendar year for domestic service in his private home. Moreover, if an employer elects this method of computation with respect to payments of the prescribed character made in any calendar year, the amount of each payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of the act. Thus, the amount of cash payments so computed to the nearest dollar shall be used for purposes of determining whether such payments constitute wages; for purposes of applying the employee and employer tax rates to the wage payments; for purposes of any required record keeping; and for