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(2) Services performed before 1962. Services performed in the employ of an instrumentality of the United States which is not wholly owned by the United States are excepted from employment if the instrumentality is exempt from the tax imposed by section 3301 by virtue of any other provision of law, and (i) the services are performed before 1962 or (ii) remuneration for the services is paid before 1962.

[T.D. 6658, 28 FR 6638, June 27, 1963]

§ 31.3306(c)(7)–1 Services in employ of States or their political subdivisions or instrumentalities.

(a) Services performed in the employ of any State, or of any political subdivision thereof, are excepted from employment. Services performed in the employ of an instrumentality of one or more States or political subdivisions thereof are excepted if the instrumentality is wholly owned by one or more of the foregoing. Services performed in the employ of an instrumentality of one or more of the several States or political subdivisions thereof which is not wholly owned by one or more of the foregoing are excepted only to the extent that the instrumentality is with respect to such services immune under the Constitution of the United States from the tax imposed by section 3301.

(b) For provisions relating to the term “State” see § 31.3306(j)–1.


§ 31.3306(c)(8)–1 Services in employ of religious, charitable, educational, or certain other organizations exempt from income tax.

(a) Services performed after 1961. Services performed by an employee after 1961 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, if the remuneration for such service is paid after 1961. 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).

(b) Services performed before 1962. (1) Services performed by an employee in the employ of an organization described in section 3306(c)(8) as in effect before 1962, that is, a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, are excepted from employment if (i) the services are performed before 1962, or (ii) remuneration for the services is paid before 1962.

(2) Any organization which is an organization of a type described in section 501(c)(3) and which—

(i) Is exempt from income tax under section 501(a), or

(ii) Has been denied exemption from income tax under section 501(a) by reason of the provisions of section 503 or 504, relating to prohibited transactions and to accumulations out of income, respectively,

is an organization of a type described in section 3306(c)(8) as in effect before 1962. An organization which would be an organization of a type described in section 501(c)(3) except for those provisions of section 501(c)(3) which are not contained in section 3306(c)(8) as in effect before 1962 (provisions relating to participation or intervention in a political campaign on behalf of a candidate for public office) is also an organization of a type described in section 3306(c)(8) as in effect before 1962.

[T.D. 6658, 28 FR 6638, June 27, 1963]

§ 31.3306(c)(9)–1 Railroad industry; services performed by an employee or an employee representative under the Railroad Unemployment Insurance Act.

(a) Services performed by an individual as an “employee” or as an “employee representative”, as those terms are defined in section 1 of the Railroad Unemployment Insurance Act, as amended, are excepted from employment.

(b) Section 1 of the Railroad Unemployment Insurance Act (45 U.S.C. 351),
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as amended, provides, in part, as follows:

For the purposes of this Act, except when used in amending the provisions of other Acts—

(a) The term “employer” means any carrier (as defined in subsection (b) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: Provided, however, That the term “employer” shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power fails within the terms of this provision. The term “employer” shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies, and other agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinafter defined and engaged in the performance of services in connection with or incidental to railroad transportation and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations. The term “employer” shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

(b) The term “carrier” means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.

(c) The term “company” includes corporations, associations, and joint-stock companies.

(d) The term “employee” (except when used in phrases establishing a different meaning) means any individual who is or has been (i) in the service of one or more employers for compensation, or (ii) an employee representative. The term “employee” shall include an employee of a local lodge or division defined as an employer in section 1(a) only if he was in the service of a carrier on or after August 29, 1935. The term “employee” includes an officer of an employer. The term “employee” shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(e) An individual is in the service of an employer whether his service is rendered within or without the United States if (i) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer’s operations, other personal services the rendition of which is integrated into the employer’s operations, and (ii) he renders such service for compensation: Provided, however, That an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if (1) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or (2) the headquarters of such local lodge or division is located in the United States; and an individual shall be deemed to be in the service of such a general committee only if (1) he is representing a local lodge or division described in clauses (1) or (2) immediately above; or (2) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or (3) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not
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conducting the principal part of its business in the United States, only such proportion of
the remuneration for such service shall be regarded as compensation as the proportion
which the months in the United States under the jurisdiction of such general com-
mittee bears to the total mileage under its jurisdiction, unless such mileage formula is
inapplicable, in which case the Board may prescribe such other formula as it finds to be
equitable, and if the application of such mileage formula, or such other formula as the
Board may prescribe, would result in the compensation of the individual being less
than 10 per centum of his remuneration for such service no part of such remuneration
shall be regarded as compensation: Provided further, That an individual not a citizen or
resident of the United States shall not be deemed to be in the service of an employer
when rendering service outside the United States to an employer who is required under
the laws applicable in the place where the service is rendered to employ therein, in
whole or in part, citizens or residents there-
of.

(f) The term “employee representative” means any officer or official representative
of a railway labor organization other than a labor organization included in the term em-
ployee as defined in section 1(a) who before or after August 29, 1935, was in the service of
an employer as defined in section 1(a) and who is duly authorized and designated to
represent employees in accordance with the Railway Labor Act, and any individual who
is regularly assigned to or regularly em-
ployed by such officer or official representa-
tive in connection with the duties of his of-

(i) The term “compensation” means any
form of money remuneration, including pay
for time lost but excluding tips, paid for
services rendered as an employee to one or
more employers, or as an employee rep-
resentative: Provided, however, That in com-
puting the compensation paid to any em-
ployee, no part of any month’s compensation
in excess of $300 for any month before July 1,
1954, or in excess of $350 for any month after
June 30, 1954, and before the calendar month
next following the month (May) in which
this Act was amended in 1959, or in excess of
$400 for any month after the month (May) in
which this Act was so amended, shall be rec-
ognized. A payment made by an employer to
an individual through the employer’s pay
roll shall be presumed, in the absence of evi-
dence to the contrary, to be compensation
for service rendered by such individual as an
employee of the employer in the period with
respect to which the payment is made. An
employee shall be deemed to be paid, “for
time lost” the amount he is paid by an em-
ployer with respect to an identifiable period
of absence from the active service of the em-
ployer, including absence on account of per-
sonal injury, and the amount he is paid by
the employer for loss of earnings resulting
from his displacement to a less remunerative
position or occupation. If a payment is made
by an employer with respect to a personal in-
jury and includes pay for time lost, the total
payment shall be deemed to be paid for time
lost unless, at the time of payment, a part of
such payment is specifically apportioned to
factors other than time lost, in which event
only such part of the payment as is not so
apportioned shall be deemed to be paid for
time lost. Compensation earned in any cal-
endar month before 1947 shall be deemed paid
in such month regardless of whether or when
payment will have been in fact made, and
compensation earned in any calendar year
after 1946 but paid after the end of such cal-
endar year shall be deemed to be compensa-
tion paid in the calendar year in which it
will have been earned if it is so reported by
the employer before February 1 of the next
successing calendar year or, if the employee
establishes, subject to the provisions of sec-
tion 8, the period during which such compen-
sation will have been earned.

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§ 31.3306(c)(10–1) Services in the em-
ploy of certain organizations ex-
empt from income tax.

(a) In general. (1) This section deals
with the exception from employment of cer-
tain services performed in the employ of any organization exempt
from income tax under section 501(a)
(other than an organization described
in section 401(a)) or under section 521.
(See the provisions of §§1.401–1,