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(b) Exclusions for noncash payments and payments for seasonal agricultural labor. (1) Noncash payments for agricultural labor are not wages.

(2) Your cash payments in a calendar year from an employer for agricultural labor are not wages, irrespective of your employer’s total annual expenditures for agricultural labor, if you are a hand harvest laborer (i.e., seasonal agricultural labor), and—

(i) Your employer paid you less than $150 in that year;

(ii) You are paid on a piece rate basis in an operation which has been, and is customarily and generally recognized in the region of employment as paying on a piece rate basis;

(iii) You commute daily from your permanent residence to the farm on which you are so employed; and,

(iv) You were employed in agriculture less than 13 weeks during the previous calendar year.

Example: In 1988, A (not a hand harvest laborer) performs agricultural labor for X for cash pay of $144 in the year. X’s total agricultural labor expenditures for 1988 are $2,450. Neither the $150 cash-pay test nor the $2,500 expenditure test is met. Therefore, X’s payments to A are not wages.

(c) When cash-pay is creditable as wages. (1) If you receive cash pay from an employer for services which are agricultural labor and for services which are not agricultural labor, we count only the amounts paid for agricultural labor in determining whether cash payments equal or exceed $150. If the amounts paid are less than $150, we count only those amounts paid for agricultural labor in determining if the $2,500 expenditure test is met.

Example: Employer X operates a store and also operates a farm. Employee A, who regularly works in the store, works on X’s farm when additional help is required for the farm activities. In calendar year 1988, X pays A $140 cash for agricultural labor performed in that year, and $2,260 for work in connection with the operation of the store. Additionally, X’s total expenditures for agricultural labor in 1988 were $2,010. Since the cash payments by X to A in the calendar year 1988 for agricultural labor are less than $150, and total agricultural labor expenditures were under $2,500, the $140 paid by X to A for agricultural labor is not wages. The $2,260 paid for work in the store is wages.

(2) The amount of cash pay for agricultural labor that is creditable to an individual is based on cash paid in a calendar year rather than on amounts earned during a calendar year.

(3) If you receive cash pay for agricultural labor in any one calendar year from more than one employer, we apply the $150 cash-pay test and $2,500 total expenditures test to each employer.

(d) Application of the $150 cash-pay and 20-day tests prior to 1988. (1) For the time period prior to 1988, we apply either the $150 a year cash-pay test or the 20-day test. Cash payments are wages if you receive $150 or more from an employer for agricultural labor or under the 20-day test if you perform agricultural labor for which cash pay is computed on a time basis on 20 or more days during a calendar year. For purposes of the 20-day test, the amount of the cash pay is immaterial, and it is immaterial whether you also receive payments other than cash or payments that are not computed on a time basis. If cash paid to you for agricultural labor is computed on a time basis, the payments are not wages unless they are paid in a calendar year in which either the 20-day test or the $150 cash-pay test is met.

(2) [Reserved]


§ 404.1056 Explanation of agricultural labor.

(a) What is agricultural labor. (1) If you work on a farm as an employee of any person, you are doing agricultural labor if your work has to do with—

(i) Cultivating the soil;

(ii) Raising, shearing, feeding, caring for, training or managing livestock, bees, poultry, fur-bearing animals or wildlife; or

(iii) Raising or harvesting any other agricultural or horticultural commodity.

(2) If you work on a farm as an employee of any person in connection with the production or harvesting of maple sap, the raising or harvesting of mushrooms, or the hatching of poultry, you are doing agricultural labor. If you work in the processing of maple sap
into maple syrup or maple sugar you
are not doing agricultural labor even
though you work on a farm. Work in a
mushroom cave or poultry hatchery is
agricultural labor only if the cave or
hatchery is operated as part of a farm.

(3) If you work as an employee of the
owner, tenant, or other operator of a
farm, you are doing agricultural labor
if most of your work is done on a farm
and is involved with—

(i) The operation, management, con-
servation, improvement, or mainte-
nance of the farm or its tools or equip-
ment (this may include work by carp-
enters, painters, mechanics, farm su-
pervisors, irrigation engineers, book-
keepers, and other skilled or semi-
skilled workers); or

(ii) Salvaging timber or clearing the
land of brush and other debris left by a
hurricane.

(4) You are doing agricultural labor
no matter for whom or where you
work, if your work involves—

(i) Cotton ginning;

(ii) Operating or maintaining ditches,
canals, reservoirs, or waterways, if
they are used only for supplying and
storing water for farm purposes and are
not owned or operated for profit; or

(iii) Producing or harvesting crude
gum (oleoresin) from living trees or
processing the crude gum into gum
spirits of turpentine and gum resin (if
the processing is done by the original
producer).

(5) Your work as an employee in the
handling, planting, drying, packing,
packaging, processing, freezing, grad-
ing, storing, or delivering to storage,
to a market or to a carrier for trans-
portation to market, of any agricul-
tural or horticultural commodity is ag-
ricultural labor if—

(i) You work for a farm operator or a
group of farm operators (other than a
cooperative organization);

(ii) Your work involves the com-
modity in its raw or unmanufactured
state; and

(iii) The operator produced most of
the commodity you work with during
the period for which you are paid, or if
you work for a group of operators, all
of the commodity you work with dur-
ing the pay period is produced by that
group.

(6) If you do nonbusiness work, it is
agricultural labor if you do the work
on a farm operated for a profit. A farm
is not operated for profit if the em-
ployer primarily uses it as a residence
or for personal or family recreation or
pleasure. (See §404.1058(a) for an expla-
nation of nonbusiness work.)

(7) The term farm operator means an
owner, tenant, or other person, in pos-
session of and operating a farm.

(8) Work is not agricultural labor if it
is done in the employ of a cooperative
organization, which includes corpora-
tions, joint-stock companies, and asso-
ciations treated as corporations under
the Code. Any unincorporated group of
operators is considered to be a coopera-
tive organization if more than 20 opera-
tors are in the group at any time during
the calendar year in which the
work is done.

(9) Processing work which changes
the commodity from its raw or natural
state is not agricultural labor. An ex-
ample of this is the extraction of juices
from fruits or vegetables. However,
work in the cutting and drying of
fruits or vegetables does not change
the commodity from its raw or natural
state and can be agricultural labor.

(10) The term commodity means a sin-
gle agricultural or horticultural prod-
uct. For example, all apples are a com-
modity, while apples and oranges are
two commodities.

(11) Work connected with the com-
mercial canning or freezing of a com-
modity is not agricultural labor nor is
work done after the delivery of the
commodity to a terminal market for
distribution for consumption.

(b) What is a farm. For purposes of so-
cial security coverage, farm includes a
stock, dairy, poultry, fruit, fur-bearing
animal, or truck farm, plantation,
ranch, nursery, range or orchard. A
farm also includes a greenhouse or
other similar structure used mostly for
raising agricultural or horticultural
products. A greenhouse or other simi-
lar structure used mostly for other
purposes such as display, storage, mak-
ing wreaths and bouquets is not a farm.

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38367, July 24, 1996; 70 FR 41955, July 21, 2005]