$31.3121(v)(2)–2

Example 5: (i) In 1993, Employer R establishes a nonqualified deferred compensation plan for Employee E under which Employee E has a fully vested right as of December 31, 1993, will be included in wages when actually or constructively paid in accordance with the general timing rule of paragraph (a)(1) of this section.

(ii) Because Employer R does not withhold and deposit the FICA tax due on benefits actually or constructively paid before January 1, 2000, are treated as FICA wages when actually or constructively paid in accordance with the general timing rule of paragraph (a)(1) of this section.

Example 6: (i) The facts are the same as in Example 5, except that Employer Q chooses (in accordance with paragraph (g)(3) of this section) to adjust its FICA tax determination for all pre-effective-date open periods by treating this section as in effect for all amounts deferred for those periods. In addition, Employer Q chooses (in accordance with paragraph (g)(4)(i)(E) of this section) to take the amounts deferred for 1994 and 1995 into account by treating these amounts as FICA wages paid and received by Employee E on January 15, 2000.

(ii) In accordance with the nonduplication rule of paragraph (a)(2)(iii) of this section, because all amounts deferred for Employee E under the plan were taken into account (or treated as taken into account), any benefit payments made to Employee E under the plan will not be included as FICA wages when actually or constructively paid.

Example 7: (i) The facts are the same as in Example 5, except that Employer Q does not withhold and deposit the FICA tax due on benefits actually or constructively paid before January 1, 2000.

(ii) Because Employer Q did not withhold and deposit the FICA tax due on benefits actually or constructively paid before January 1, 2000, Employer Q did not determine FICA tax liability and satisfy FICA tax withholding requirements in accordance with a reasonable, good faith interpretation of section 3121(v)(2). Thus, the transition rules provided in paragraphs (g)(3) and (4) of this section do not apply. As a result, any amount that would have been required to have been taken into account under this section before January 1, 1994 is not treated as if it had been so taken into account under paragraph (g)(4)(ii)(D) of this section, and benefit payments attributable to amounts deferred before January 1, 2000, are treated as FICA wages when actually or constructively paid in accordance with the general timing rule of paragraph (a)(1) of this section.

Example 8: (i) In 1993, Employer R establishes a nonqualified deferred compensation plan for Employee F under which Employee F's highest salary is $3 million in 2000 and Employee F receives $1.5 million in 2000 and Employee F receives $1.5 million in 2000 and Employee F receives $1.5 million in 2000 and Employee F receives $1.5 million in 2000 and Employee F receives $1.5 million in 2000.

(ii) In accordance with paragraphs (g)(1) and (4)(i)(E) of this section, the largest amount that could have been taken into account in 1993 is the present value of a lump sum payment of $500,000, payable in 2000, because that is the maximum amount to which Employee F has a legally binding right as of December 31, 1993. Employee F's highest salary is, in fact, $3 million in 2000 and Employee F receives $1.5 million in 2000 and Employee F receives $1.5 million in 2000 and Employee F receives $1.5 million in 2000 and Employee F receives $1.5 million in 2000 and Employee F receives $1.5 million in 2000 and Employee F receives $1.5 million in 2000.

§31.3121(v)(2)–2 Effective dates and transition rules.

(a) General statutory effective date. Except as otherwise provided in paragraphs (b) through (e) of this section, section 3121(v)(2) and the amendments made to section 3121(a)(2), (a)(3), and (a)(13) by the Social Security Amendments of 1983 (Pub. L. 98–21, 97 Stat. 65), as amended by section 2662(f)(2) of the Deficit Reduction Act of 1984 (Pub. L. 98–369, 98 Stat. 494), apply to

[64 FR 4547, Jan. 29, 1999; 64 FR 15687, Apr. 1, 1999]
§ 31.3121(v)(2)–2 26 CFR Ch. I (4–1–14 Edition)

amounts deferred and benefits paid after December 31, 1983.
(b) Definitions. For purposes of §31.3121(v)(2)–1 and this section, the following definitions apply:
(1) FICA. FICA means the Federal Insurance Contributions Act (26 U.S.C. 3101 et seq.).
(2) 457(a) plan. A 457(a) plan means an eligible deferred compensation plan of a State or local government or of a tax-exempt organization to which section 457(a) applies.
(3) Gap agreement. Gap agreement means an agreement adopted after March 24, 1983, and on or before December 31, 1983, between an individual and a nonqualified deferred compensation plan within the meaning of §31.3121(v)(2)–1(b). Such an agreement does not fail to be a gap agreement merely because the terms of the plan are changed after December 31, 1983.
(4) Individual party to a gap agreement. Individual party to a gap agreement means an individual who was eligible to participate in a gap agreement on December 31, 1983, under the terms of the agreement on that date. An individual will be treated as an individual party to a gap agreement even if the individual has not accrued any benefits under the plan by December 31, 1983, and regardless of whether the individual has taken any specific action to become a party to the agreement. However, an individual who becomes eligible to participate in a gap agreement after December 31, 1983, is not an individual party to a gap agreement.
(5) Individual party to a March 24, 1983 agreement. Individual party to a March 24, 1983 agreement means an individual who was eligible to participate in a March 24, 1983 agreement under the terms of the agreement on March 24, 1983. An individual will be treated as an individual party to a March 24, 1983 agreement even if the individual has not accrued any benefits under the plan by March 24, 1983, and regardless of whether the individual has taken any specific action to become a party to the agreement. However, an individual who becomes eligible to participate in a March 24, 1983 agreement after March 24, 1983, is not an individual party to a March 24, 1983 agreement.
(6) March 24, 1983 agreement. March 24, 1983 agreement means an agreement in existence on March 24, 1983, between an individual and a nonqualified deferred compensation plan within the meaning of §31.3121(v)(2)–1(b). Such an agreement does not fail to be a March 24, 1983 agreement merely because the terms of the plan are changed after March 24, 1983. In addition, for purposes of this paragraph (b)(6) only, any plan (or agreement) that provides for payments that qualify for one of the retirement payment exclusions is treated as a nonqualified deferred compensation plan. For example, §31.3121(v)(2)–1(b)(4)(v) provides that certain benefits established in connection with impending termination do not result from the deferral of compensation and thus are not considered deferred under a nonqualified deferred compensation plan. However, a plan that provides such benefits and that was in existence on March 24, 1983, is treated as a nonqualified deferred compensation plan for purposes of this paragraph (b) to the extent it provides benefits that would have satisfied one of the retirement payment exclusions.
(7) Retirement payment exclusions. Retirement payment exclusions are the exclusions from wages (for FICA tax purposes) for retirement payments under section 3121(a)(2)(A), (a)(3), and (a)(13)(A)(iii), as in effect on April 19, 1983 (the day before enactment of the Social Security Amendments of 1983).
(8) Transition benefits. Transition benefits are payments made after December 31, 1983, attributable to services rendered before January 1, 1984. For this purpose, transition benefits are determined without regard to any changes made in the terms of the plan after March 24, 1983, in the case of a March 24, 1983 agreement or after December 31, 1983, in the case of a gap agreement.
(c) Transition rules—(1) In general. Except as provided in paragraph (c)(2) or (3) of this section, the general statutory effective date described in paragraph (a) of this section applies to benefit payments after December 31, 1983. Thus, except as provided in paragraph (c)(2) or (3) of this section, section 3121(v)(2) applies, and the retirement payment exclusions do not apply, to benefit payments made after December
31.3127–1T Exemption for employers and their employees where both are members of religious faiths opposed to participation in Social Security Act programs (temporary).

(a) If an employer (or if the employer is a partnership, each partner therein) and their employee are members of a recognized religious sect or division described in section 1402(g)(1) of the Code, both the employer and employee adhere to the tenets and teachings of that sect, and both the employer and employee have filed and had approved applications under section 3127(b) for exemption from the taxes imposed by sections 3111 and 3101 then the employer is exempt from taxes imposed by section 3111 with respect to the wages

§ 31.3123–1 Deductions by an employer from remuneration of an employee.

Any amount deducted by an employer from the remuneration of an employee is considered to be part of the employee’s remuneration and is considered to be paid to the employee as remuneration at the time that the deduction is made. It is immaterial that any act of Congress or the law of any State requires or permits such deductions and the payment of the amount thereof to the United States, a State, or any political subdivision thereof.

§ 31.3127–1T Exemption for employers and their employees where both are members of religious faiths opposed to participation in Social Security Act programs (temporary).

(a) If an employer (or if the employer is a partnership, each partner therein) and their employee are members of a recognized religious sect or division described in section 1402(g)(1) of the Code, both the employer and employee adhere to the tenets and teachings of that sect, and both the employer and employee have filed and had approved applications under section 3127(b) for exemption from the taxes imposed by sections 3111 and 3101 then the employer is exempt from taxes imposed by section 3111 with respect to the wages

(b) 

(c) 

(d) 

(e) 

(f) 

(g) 

(h) 

(i) 

(j) 

(k) 

(l) 

(m) 

(n) 

(o) 

(p) 

(q) 

(r) 

(s) 

(t) 

(u) 

(v) 

(w) 

(x) 

(y) 

(z)