

§ 31.3121(k)-3 Request for coverage of individual employed by exempt organization before August 1, 1956.

(a) *Application of this section.* This section is applicable to requests made after July 31, 1956, and before September 14, 1960, under section 403 of the Social Security Amendments of 1954, as amended, except that nothing in this section shall render invalid any act performed pursuant to, and in accordance with, Revenue Ruling 57-11, Cumulative Bulletin 1957-1, page 344, or Revenue Ruling 58-514, Cumulative Bulletin 1958-2, page 733. (For regulations relating to requests made before August 1, 1956, under section 403 of the Social Security Amendments of 1954, see 26 CFR (1939) 408.216(c) and (d) (Regulations 128).)

(b) *Organization which did not have waiver certificate in effect—(1) Coverage requested by employee before August 27, 1958.* Pursuant to section 403(a) of the Social Security Amendments of 1954, as amended by section 401 of the Social Security Amendments of 1956, any individual who, as an employee, performed services after December 31, 1950, and before August 1, 1956, for an organization described in section 501(c)(3) which was exempt from income tax under section 501(a), or which was exempt from income tax under section 101(6) of the Internal Revenue Code of 1939, but which failed to file, before August 1, 1956, a valid waiver certificate under section 3121(k), or under section 1426(l) of the Internal Revenue Code of 1939, may request after July 31, 1956, and before August 27, 1958, that such part of the remuneration received by him for services performed in the employ of the organization after 1950 and before 1957 with respect to which employee and employer taxes were paid be deemed to constitute remuneration for employment, if:

(i) Any of the services performed by the individual after December 31, 1950, and before January 1, 1957, would have constituted employment if such a certificate on Form SS-15 filed by the organization had been in effect for the period during which the services were performed and the individual's signature had appeared on the accompanying list on Form SS-15a;

(ii) The employee and employer taxes were paid with respect to any part of the remuneration received by the individual from the organization for such services;

(iii) A part of such taxes was paid before August 1, 1956;

(iv) Such taxes as were paid before August 1, 1956, were paid by the organization in good faith and upon the assumption that it had filed a valid certificate under section 3121(k), or under section 1426(l) of the Internal Revenue Code of 1939; and

(v) No refund (or credit) of such taxes had been obtained by either the employee or the employer, exclusive of any refund (or credit) which would have been allowable if the services performed by the individual had constituted employment.

(2) *Coverage requested by employee after August 26, 1958, and before September 14, 1960.* Requests may be made after August 26, 1958, and before September 14, 1960, pursuant to section 403(a) of the Social Security Amendments of 1954, as amended by section 401 of the Social Security Amendments of 1956, by the Act of August 27, 1958 (Pub. L. 85-785, 72 Stat. 938), and by section 105(b)(6) of the Social Security Amendments of 1960. Any individual who, as an employee, performed services after December 31, 1950, and before August 1, 1956, for an organization described in section 501(c)(3) which was exempt from income tax under section 501(a), or which was exempt from income tax under section 101(6) of the Internal Revenue Code of 1939, but which did not have in effect during the entire period in which the individual was so employed a valid waiver certificate under section 3121(k), or under section 1326(l) of the Internal Revenue Code of 1939, may request after August 26, 1958, and before September 14, 1960, that such part of the remuneration received by him for services performed in the employ of the organization after 1950 and before 1957 with respect to which employee and employer taxes were paid be deemed to constitute remuneration for employment, if:

(i) Any of the services performed by the individual after December 31, 1950, and before January 1, 1957, would have

constituted employment if such a certificate on Form SS-15 filed by the organization had been in effect for the period during which the services were performed and the individual's signature had appeared on the accompanying list on Form SS-15a;

(ii) The employee and employer taxes were paid with respect to any part of the remuneration received by the individual from the organization for such services performed during the period in which the organization did not have a valid waiver certificate in effect;

(iii) A part of such taxes was paid before August 1, 1956;

(iv) Such taxes as were paid before August 1, 1956, were paid by the organization in good faith, and either without knowledge that a waiver certificate was necessary or upon the assumption that it had filed a valid certificate under section 3121(k), or under section 1426(l) of the Internal Revenue Code of 1939; and

(v) No refund (or credit) of such taxes has been obtained by either the employee or the employer, exclusive of any refund (or credit) which would be allowable if the services performed by the individual had constituted employment.

(3) *Execution and filing of request.* (i) Except where the alternative procedure set forth in paragraph (b)(3)(ii) of this section is followed, the request of an individual under section 403(a) of the Social Security Amendments of 1954, as amended, is required to be made and filed as provided in this subdivision. The request shall be made in writing, be signed and dated by the individual, and include:

(a) The name and address of the organization for which the services were performed;

(b) The name, address, and social security account number of the individual;

(c) A statement that the individual has not obtained refund or credit (other than a refund or credit which would have been allowable if the services had constituted employment) from the district director of any part of the employee tax paid with respect to remuneration received by him from the organization for services performed after 1950 and before 1957; and

(d) A request that all remuneration received by him from the organization for such services with respect to which employee and employer taxes had been paid shall be deemed to constitute remuneration for employment to the extent authorized by section 403(a) of the Social Security Amendments of 1954, as amended.

The request of an individual shall be accompanied by a statement of the organization incorporating the substance of each of the five conditions listed in paragraph (b)(1) or (2), whichever is appropriate, of this section. The statement of the organization shall show also that the individual performed services for the organization after December 31, 1950, and before August 1, 1956; that the organization was an organization described in section 501(c)(3) which was exempt from income tax under section 501(a) or was exempt from income tax under section 101(6) of the Internal Revenue Code of 1939, and the district director with whom returns on Form 941 were filed. The organization's statement shall be signed by the president or other principal officer of the organization who shall certify that the statement is correct to the best of his knowledge and belief. If the statement of the organization is not submitted with the individual's request, the individual shall include in his request an explanation of his inability to submit the statement. Other information may be required, but should be submitted only upon receipt of a specific request therefore. No particular form is prescribed for the request of the individual or the statement of the organization required to be submitted with the request. The individual's request should be filed with the district director with whom the organization files returns on Form 941. If the individual is deceased or mentally incompetent and the request is made by the legal representative of the individual or other person authorized to act on his behalf, the request shall be accompanied by evidence showing such person's authority to make the request.

(ii) An organization which has or had in its employ individuals with respect

to whom section 403(a) of the Social Security Amendments of 1954, as amended, is applicable may, if it so desires, prepare a form or forms for use by any such individual or individuals in making requests under such section. Any such form shall provide space for the signature of the individual or individuals and contain such information as required to be included in a request (see paragraph (b)(3)(i) of this section). Any such form used by more than one individual, and any such form used by one individual which is signed and returned to the organization, shall be submitted by the organization, together with its statement (as required in paragraph (b)(3)(i) of this section), to the district director with whom the organization files its returns on Form 941. An individual is not required to use a form prepared by the organization but may, at his election, file his request in accordance with the provisions of paragraph (b)(3)(i) of this section.

(4) *Optional tax payments by organization.* An organization which prior to August 1, 1956, reported and paid employee and employer taxes with respect to any portion of the remuneration paid to an individual, who is eligible to file a request under section 403(a) of the Social Security Amendments of 1954, as amended, for services performed by him after 1950 and before 1957, may report and pay such taxes before September 14, 1960, with respect to any remaining portion of such remuneration which would have constituted wages if a certificate had been in effect with respect to such services. Such taxes may be reported as an adjustment without interest in the manner prescribed in Subpart G of the regulations in this part.

(5) *Effect of request.* If a request is made and filed under the conditions stated in this paragraph with respect to one or more individuals, remuneration for services performed by each such individual after 1950 and before 1957, with respect to which the employee and employer taxes are paid on or before the date on which the request was filed with the district director, will be deemed to constitute remuneration for employment to the extent that such services would have constituted employment as defined in section

3121(b), or in section 1426(b) of the Internal Revenue Code of 1939, if a certificate had been in effect with respect to such services. However, the provisions of section 3121(a) and §§ 31.3121(a)-1 to 31.3121(a)(10)-1, inclusive, of the regulations in this part or the provisions of section 1426(a) of the Internal Revenue Code of 1939 and the regulations in 26 CFR (1939) 408.226 and 408.227 (Regulations 128), as the case may be, are applicable in determining the extent to which such remuneration for employment constitutes wages for purposes of the employee and employer taxes.

(c) *Individual who failed to sign list of concurring employees—(1) In general.* Pursuant to section 403(b) of the Social Security Amendments of 1954, as amended, any individual who, as an employee, performed services after December 31, 1950, and before August 1, 1956, for an organization which filed a valid certificate under section 3121(k), or under section 1426(l) of the Internal Revenue Code of 1939, but who failed to sign the list of employees concurring in the filing of such certificate, may request on or before January 1, 1959, that the remuneration received by him for such services be deemed to constitute remuneration for employment, if:

(i) Any of the services performed by the individual after December 31, 1950, and before August 1, 1956, would have constituted employment if the signature of such individual had appeared on the list of employees who concurred in the filing of the certificate;

(ii) The employee and employer taxes were paid before August 1, 1956, with respect to any part of the remuneration received by the individual from the organization for such services; and

(iii) No refund (or credit) of such taxes has been obtained either by the employee or the employer, exclusive of any refund (or credit) which would be allowable if the services performed by the individual had constituted employment.

(2) *Execution and filing of request.* (i) Except where the alternative procedure set forth in subdivision (ii) of this subparagraph is followed, the request of an individual under section 403(b) of the Social Security Amendments of 1954, as amended, shall be made and filed as

provided in this subdivision. The request shall be filed on or before January 1, 1959, be made in writing, be signed and dated by the individual, and include:

(a) The name and address of the organization for which the services were performed;

(b) The name, address, and social security account number of the individual;

(c) A statement that the individual has not obtained a refund or credit (other than a refund or credit which would be allowable if the services had constituted employment) from the district director of any part of the employee tax paid before August 1, 1956, with respect to remuneration received by him from the organization;

(d) A request that all remuneration received by the individual from the organization for services performed after 1950 and before August 1, 1956, with respect to which employee and employer taxes were paid before August 1, 1956, shall be deemed to constitute remuneration for employment to the extent authorized by section 403(b) of the Social Security Amendments of 1954, as amended; and

(e) A statement that the individual understands that, upon the filing of such request with the district director, (1) he will be deemed to have concurred in the certificate which was previously filed by the organization, and (2) the employee and employer taxes will be applicable to all wages received, and to be received, by him for services performed for the organization on or after the effective date of such certificate to the extent that such taxes would have been applicable if he had signed the list on Form SS-15a submitted with the certificate.

The request of an individual shall be accompanied by a statement of the organization incorporating the substance of each of the three conditions listed in paragraph (c)(1) of this section. The statement of the organization should also show that the individual performed services for the organization after December 31, 1950, and before August 1, 1956; that the organization filed a valid certificate under section 3121(k), or under section 1426(l) of the Internal Revenue Code of 1939; and the

district director with whom returns on Form 941 are filed. Such statement shall be signed by the president or other principal officer of the organization who shall certify that the statement is correct to the best of his knowledge and belief. If the statement of the organization is not submitted with the individual's request, the individual shall include in his request an explanation of his inability to submit such statement. Other information may be required, but should be submitted only upon receipt of a specific request therefor. No particular form is prescribed for the request of the individual or the statement of the organization required to be submitted with the request. The individual's request should be filed with the district director with whom the organization files returns on Form 941. If the individual is deceased or mentally incompetent and the request is made by the legal representative of the individual or other person authorized to act on his behalf, the request shall be accompanied by evidence showing such persons' authority to make the request.

(ii) An organization which has or had in its employ individuals with respect to whom section 403(b) of the Social Security Amendments of 1954, as amended, is applicable, may, if it so desires, prepare a form or forms for use by any such individual or individuals in making requests under such section. Any such form shall provide space for the signature of the individual or individuals and contain such information as is required by paragraph (c)(1)(i) of this section to be included in a request. Any such form used by more than one individual, and any such form used by one individual which is signed and returned to the organization, shall be submitted by the organization, together with its statement (as required in paragraph (c)(1)(i) of this section), to the district director with whom the organization files returns on Form 941. An individual is not required to use a form prepared by the organization but may, at his election, file his request in accordance with the provisions of subdivisions (i) of this subparagraph.

(3) *Effect of request.* An individual who makes and files a request under the

conditions stated in this paragraph with respect to services performed as an employee of an organization described in section 501(c)(3) which was exempt from income tax under section 501(a), or which was exempt from income tax under section 101(6) of the Internal Revenue Code of 1939, will be deemed to have signed the list accompanying the certificate filed by the organization under section 3121(k), or under section 1426(1) of the Internal Revenue Code of 1939. Accordingly, all services performed by the individual for the organization on and after the effective date of the certificate will constitute employment to the same extent as if he had, in fact, signed the list. The employee tax and employer tax are applicable with respect to any remuneration paid to the employee by the organization which constitutes wages. If less than the correct amount of such taxes has been paid, the additional amount due should be reported as an adjustment without interest within the time specified in subpart G of the regulations in this part.

[T.D. 6744, 29 FR 8318, July 2, 1964]

§ 31.3121(k)-4 Constructive filing of waivers of exemption from social security taxes by certain tax-exempt organizations.

(a) *Constructive filing of waiver certificate where no refund or credit has been allowed.* (1) This paragraph applies (except as provided in subparagraph (3) of this paragraph) to an organization if all of the following four conditions are met.

(i) The organization is one described in section 501(c)(3) of the Internal Revenue Code of 1954, which is exempt from income tax under section 501(a) of the Code.

(ii) The organization did not file a valid waiver certificate under section 3121(k)(1) of the Internal Revenue Code of 1954 (or the corresponding provision of prior law) as of the later of October 19, 1976, or the earliest date on which it satisfies paragraph (a)(1)(iii) of this section.

(iii) The taxes imposed by sections 3101 and 3111 of the Code were paid with respect to remuneration paid by the organization to its employees, as though such certificate had been filed, during

any period that includes all or part of at least three consecutive calendar quarters and that did not terminate before the end of the third calendar quarter of 1973.

(iv) The Internal Revenue Service did not allow (or erroneously allowed) a refund or credit of any part of the taxes paid as described in subdivision (iii) of this subparagraph with respect to remuneration for services performed on or after April 1, 1973. For purposes of the previous sentence, a refund or credit which would have been allowed, even if a valid waiver certificate filed under section 3121(k)(1) had been in effect, shall be disregarded. A refund or credit will be regarded as having been erroneously allowed if it was credited by the Internal Revenue Service to the taxpayer account of the organization or any of its employees on or after September 9, 1976, even though it was properly made under the law in effect when made.

(2) (i) An organization to which this paragraph applies shall be deemed to have filed a valid waiver certificate under section 3121(k)(1) (or the corresponding provision of prior law) for purposes of section 210(a)(8)(B) of the Social Security Act and section 3121(b)(8)(B). The waiver certificate shall be deemed to have been filed on the first day of the period described in paragraph (a)(1)(iii) of this section and shall be effective on the first day of the calendar quarter in which such period began. However, such waiver is effective only with respect to remuneration for services performed after 1950.

(ii) The waiver certificate shall be deemed to have been accompanied by a list containing the signature, address, and social security number (if any) of each employee with respect to whom the taxes imposed by sections 3101 and 3111 were paid as described in paragraph (a)(1)(iii) of this section. Each such employee shall be deemed to have concurred in the filing of the certificate for purposes of section 210(a)(8)(B) of the Social Security Act and section 3121(b)(8)(B). A statement containing the name, address, and employer identification number of the organization, and the name, last known address, and social security number (if any) of each employee described in the preceding