

**Internal Revenue Service, Treasury**

**§ 31.3401(a)(7)-1**

not exempt from taxation under section 872(b)(3). See §§ 1.872-2 and 1.1441-4 of this chapter (Income Tax Regulations). A nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (J) includes an alien individual admitted to the United States as an "exchange visitor" under section 201 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1446).

(2) Section 101 of the Immigration and Nationality Act (8 U.S.C. 1101), as amended, provides in part, as follows:

SEC. 101. *Definitions.* [Immigration and Nationality Act (66 Stat. 166)]

(a) As used in this chapter—\* \* \*

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

\* \* \* \* \*

(F) (i) An alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by him and approved by the Attorney General after consultation with the Office of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him;

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(J) An alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Secretary of State, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training, and the alien spouse and minor children of any such

alien if accompanying him or following to join him.

(e) This section shall not apply with respect to remuneration paid after December 31, 1966. For rules with respect to such remuneration see § 31.3401(a)(6)-1.

(Sec. 101. Immigration and Nationality Act, as amended by sec. 101, Act of June 27, 1952, 66 Stat. 166; sec. 109, Act of Sept. 21, 1961, 75 Stat. 534)

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6654, 28 FR 5251, May 28, 1963; T.D. 6727, 29 FR 5869, May 5, 1964; T.D. 6908, 31 FR 16775, Dec. 31, 1966]

**§ 31.3401(a)(7)-1 Remuneration paid before January 1, 1967, for services performed by nonresident alien individuals who are residents of a contiguous country and who enter and leave the United States at frequent intervals.**

(a) *Transportation service.* Remuneration paid to nonresident aliens who are residents of a contiguous country (Canada or Mexico) and who, in the performance of their duties in transportation service between points in the United States and points in a contiguous country, enter and leave the United States at frequent intervals, is excepted from wages and hence is not subject to withholding. This exception applies to personnel engaged in railroad, bus, ferry, steamboat, and aircraft services and applies whether the employer is a domestic or foreign entity. Thus, the remuneration of a nonresident alien individual who is a resident of Canada and an employee of a domestic railroad, for services as a member of the crew of a train operating between points in Canada and points in the United States, is not subject to withholding under section 3402.

(b) *Service on international projects.* Remuneration paid to nonresident aliens who are residents of a contiguous country (Canada or Mexico) and who, in the performance of their duties in connection with the construction, maintenance or operation of a waterway, viaduct, dam, or bridge traversed by or traversing the boundary between the United States and Canada or the boundary between the United States and Mexico, as the case may be, enter and leave the United States at frequent

intervals, is excepted from wages and hence is not subject to withholding. Thus, the remuneration of a non-resident alien individual who is a resident of Canada, for services as an employee in connection with the construction, maintenance, or operation of the Saint Lawrence Seaway and who, in the performance of such services, enters and leaves the United States at frequent intervals, is not subject to withholding under section 3402.

(c) *Limitation on application of section.* The exception provided by this section has no application to the remuneration of a resident of Canada or of Mexico who is employed wholly within the United States as, for example, where such a resident is employed to perform service at a fixed point or points in the United States, such as a factory, store, office, or designated area or areas within the United States, and who commutes from his home in Canada or Mexico in the pursuit of his employment within the United States.

(d) *Certificate required.* In order for the exception to apply, the nonresident alien employee must furnish his employer a statement setting forth the employee's name and address and certifying (1) that he is not a citizen of the United States, (2) that he is a resident of Canada or Mexico, as the case may be, and (3) the approximate period of time during which he has had such status. Such statement shall be dated, shall be signed by the employee, and shall contain, or be verified by, a written declaration that it is made under the penalties of perjury. No particular form is prescribed for this statement.

(e) *Effective date.* This section shall not apply with respect to remuneration paid after December 31, 1966. For rules with respect to such remuneration see § 31.3401(a)(6)-1.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6908, 31 FR 16776, Dec. 31, 1966]

**§ 31.3401(a)(8)(A)-1 Remuneration for services performed outside the United States by citizens of the United States.**

(a) *Remuneration excluded from gross income under section 911.* (1) (i) Remuneration paid for services performed outside the United States for an em-

ployer (other than the United States or any agency thereof) by a citizen of the United States does not constitute wages and hence is not subject to withholding, if at the time of payment it is reasonable to believe that such remuneration will be excluded from gross income under the provisions of section 911. The reasonable belief contemplated by the statute may be based upon any evidence reasonably sufficient to induce such belief, even though such evidence may be insufficient upon closer examination by the district director or the courts finally to establish that the remuneration is excludable from gross income under the provisions of section 911. The reasonable belief shall be based upon the application of section 911 and the regulations thereunder in Part 1 of this chapter (Income Tax Regulations).

(ii) Remuneration paid by an employer to an employee constitutes wages, and hence is subject to withholding only to the extent that the remuneration is expected to exceed the aggregate amount which is excludable from the employee's gross income under section 911(a). For amounts paid after December 31, 1984, the determination of the amount subject to withholding shall be made by applying the excludable amount, on a pro rata basis, to each payment of remuneration to the employee. For this purpose, an employer is not required to ascertain information with respect to amounts received by his employee from any other source; but, if the employer has such information, he shall take it into account in determining whether the earned income of the employee is in excess of the applicable limitation. For purposes of section 911(d)(5) and § 1.911-2(c), relating to an employee who states to the authorities of a foreign country that he is not a resident of that country, the employer is not required to ascertain whether such a statement has been made; but if an employer knows that such a statement has been made, he shall presume that the employee is not a bona fide resident of that country, unless the employer also knows that the authorities of the foreign country have determined, notwithstanding the statement that the employee is a resident of that