

**§ 31.3121(a)(3)-1**

**26 CFR Ch. I (4-1-07 Edition)**

act, and the salary the injured employee receives pursuant to the ordinance is excluded from wages under section 3121(a)(2)(A).

(f) It is immaterial for purposes of this exclusion whether the amount or possibility of such benefit payments is taken into consideration in fixing the amount of an employee's remuneration or whether such payments are required, expressly or impliedly, by the contract of service.

[ T.D. 6516, 25 FR 13032, Dec. 20, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 9233, 70 FR 74199, Dec. 15, 2005 ]

**§ 31.3121(a)(3)-1 Retirement payments.**

The term "wages" does not include any payment made by an employer to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of the employee's retirement. Thus, payments made to an employee on account of his retirement are excluded from wages under this exception even though not made under a plan or system.

**§ 31.3121(a)(4)-1 Payments on account of sickness or accident disability, or medical or hospitalization expenses.**

The term "wages" does not include any payment made by an employer to, or on behalf of, an employee on account of the employee's sickness or accident disability or the medical or hospitalization expenses in connection with the employee's sickness or accident disability, if such payment is made after the expiration of 6 calendar months following the last calendar month in which such employee worked for such employer. Such payments are excluded from wages under this exception even though not made under a plan or system. If the employee does not actually perform services for the employer during the requisite period, the existence of the employer-employee relationship during that period is immaterial.

**§ 31.3121(a)(5)-1 Payments from or to certain tax-exempt trusts, or under or to certain annuity plans or bond purchase plans.**

(a) *Payments from or to certain tax-exempt trusts.* The term "wages" does not include any payment made—

(1) By an employer, on behalf of an employee or his beneficiary, into a trust, or

(2) To, or on behalf of, an employee or his beneficiary from a trust.

If at the time of such payment the trust is exempt from tax under section 501(a) as an organization described in section 401(a). A payment made to an employee of such a trust for services rendered as an employee of the trust and not as a beneficiary thereof is not within this exclusion from wages.

(b) *Payments under or to certain annuity plans.* (1) The term "wages" does not include any payment made after December 31, 1962—

(i) By an employer, on behalf of an employee or his beneficiary, into an annuity plan, or

(ii) To, or on behalf of, an employee or his beneficiary under an annuity plan, if at the time of such payment the annuity plan is a plan described in section 403(a).

(2) The term "wages" does not include any payment made before January 1, 1963—

(i) By an employer, on behalf of an employee or his beneficiary, into an annuity plan, or

(ii) To, or on behalf of, an employee or his beneficiary under an annuity plan,

if at the time of such payment the annuity plan meets the requirements of section 401(a)(3), (4), (5), and (6).

(c) *Payments under or to certain bond purchase plans.* The term "wages" does not include any payment made after December 31, 1962—

(1) By an employer, on behalf of an employee or his beneficiary, into a bond purchase plan, or

(2) To, or on behalf of, an employee or his beneficiary under a bond purchase plan,

if at the time of such payment the plan is a qualified bond purchase plan described in section 405(a).

[T.D. 6876, 31 FR 2596, Feb. 10, 1966]

**§ 31.3121(a)(5)-2T Payments under or to an annuity contract described in section 403(b) (temporary).**

(a) *Salary reduction agreement defined.* For purposes of section 3121(a)(5)(D), the term *salary reduction agreement*

means a plan or arrangement (whether evidenced by a written instrument or otherwise) whereby payment will be made by an employer, on behalf of an employee or his or her beneficiary, under or to an annuity contract described in section 403(b)—

(1) If the employee elects to reduce his or her compensation pursuant to a cash or deferred election as defined at § 1.401(k)-1(a)(3) of this chapter;

(2) If the employee elects to reduce his or her compensation pursuant to a one-time irrevocable election made at or before the time of initial eligibility to participate in such plan or arrangement (or pursuant to a similar arrangement involving a one-time irrevocable election); or

(3) If the employee agrees as a condition of employment (whether such condition is set by statute, contract, or otherwise) to make a contribution that reduces his or her compensation.

(b) *Effective date.* (1) This section is applicable November 16, 2004.

(2) The applicability of this section expires on or before November 15, 2007.

[T.D. 9159, 69 FR 67055, Nov. 16, 2004]

**§ 31.3121(a)(6)-1 Payment by an employer of employee tax under section 3101 or employee contributions under a State law.**

The term “wages” does not include any payment by an employer (without deduction from the remuneration of, or other reimbursement from, the employee) of either (a) the employee tax imposed by section 3101 or the corresponding section of prior law, or (b) any payment required from an employee under a State unemployment compensation law.

**§ 31.3121(a)(7)-1 Payments for services not in the course of employer’s trade or business or for domestic service.**

(a) *Meaning of terms*—(1) *Services not in the course of employer’s trade or business.* The term “services not in the course of the employer’s trade or business” includes services that do not promote or advance the trade or business of the employer. Such term does not include services performed for a corporation. As used in this section, the term does not include service not in

the course of the employer’s trade or business performed on a farm operated for profit or domestic service in a private home of the employer. See paragraph (f) of § 31.3121(g)-1 for provisions relating to services not in the course of the employer’s trade or business performed on a farm operated for profit.

(2) *Domestic service in a private home of the employer.* Services of a household nature performed by an employee in or about a private home of the person by whom he is employed constitute domestic service in a private home of the employer. A private home is a fixed place of abode of an individual or family. A separate and distinct dwelling unit maintained by an individual in an apartment house, hotel, or other similar establishment may constitute a private home. If a dwelling house is used primarily as a boarding or lodging house for the purpose of supplying board or lodging to the public as a business enterprise, it is not a private home. In general, services of a household nature in or about a private home include services performed by cooks, waiters, butlers, housekeepers, governesses, maids, valets, baby sitters, janitors, laundresses, furnacemen, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use. The term “domestic service in a private home of the employer” does not include the services enumerated above unless such services are performed in or about a private home of the employer. Services not of a household nature, such as services performed as a private secretary, tutor, or librarian, even though performed in the employer’s home, are not included within the term “domestic service in a private home of the employer”. As used in this section, the term does not include domestic service in a private home of the employer performed on a farm operated for profit or service not in the course of the employer’s trade or business. See paragraph (f) § 31.3121(g)-1 for provisions relating to domestic service in a private home of the employer performed on a farm operated for profit.

(b) *Payments other than in cash.* The term “wages” does not include remuneration paid in any medium other than cash (1) for service not in the