

§ 31.3121(a)(8)-1

course of the employer's trade or business, or (2) for domestic service in a private home of the employer. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any medium other than cash, such as lodging, food, clothing, car tokens, transportation passes or tickets, or other goods or commodities, for service not in the course of the employer's trade or business or for domestic service in a private home of the employer does not constitute wages.

(c) *Cash payments.* (1) The term *wages* does not include cash remuneration paid by an employer in any calendar year to an employee for—

(i) Domestic service in a private home of the employer, unless the cash remuneration paid in such year by the employer to the employee for such service equals or exceeds the applicable dollar threshold (as defined in section 3121(x)) for such year; or

(ii) Service not in the course of the employer's trade or business, unless the cash remuneration paid in such year by the employer to the employee for such service equals or exceeds \$100.

(2) The tests relating to cash remuneration are based on the remuneration paid in a calendar year rather than on the remuneration earned during a calendar year. The following example illustrates this provision:

Example. On March 31, 2004, employer X pays employee A cash remuneration of \$100 for service not in the course of X's trade or business. Such remuneration constitutes wages subject to the taxes even though \$10 thereof represents payment for such service performed by A for X in December 2003.

(3) In determining whether wages have been paid either for domestic service in a private home of the employer or for service not in the course of the employer's trade or business, only cash remuneration for such service shall be taken into account. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as lodging, food, clothing, car tokens, transportation passes or tickets, or other goods or commodities, is disregarded in determining whether the cash-remuneration test is met. If an employee receives cash remuneration

from an employer in a calendar year for both types of services the pertinent cash-remuneration test is to be applied separately to each type of service. If an employee receives cash remuneration from more than one employer in a calendar year for domestic service in a private home of the employer or for service not in the course of the employer's trade or business, the pertinent cash-remuneration test is to be applied separately to the remuneration received from each employer.

(d) *Cross references.* (1) For provisions relating to deduction of employee tax or amounts equivalent to the tax from cash payments for the services described in this section, see § 31.3102-1;

(2) For provisions relating to time of payment of wages for such services, see § 31.3121(a)-2;

(3) For provisions relating to computations to the nearest dollar of any payment of cash remuneration for domestic service in a private home of the employer, see § 31.3121(i)-1.

(e) *Effective dates.* (1) The provisions of this section apply to any cash payment for service not in the course of the employer's trade or business made on or after January 1, 1978 and for domestic service in a private home of the employer made on or after January 1, 1994.

(2) For rules applicable to any cash payment made prior to the dates set forth in paragraph (e)(1), see § 31.3121(a)(7)-1 in effect at such time (see 26 CFR part 31 contained in the edition of 26 CFR Parts 30 to 39, revised as of April 1, 2006).

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 9266, 71 FR 35155, June 19, 2006]

§ 31.3121(a)(8)-1 Payments for agricultural labor.

(a) *Scope of this section.* For purposes of the regulations in this section, the term "agricultural labor" means only such agricultural labor (see § 31.3121(g)-1) as constitutes employment or is deemed to constitute employment by reason of the rules relating to included and excluded services contained in section 3121(c) (see § 31.3121(c)-1) or the corresponding section of prior law.

(b) *Payments other than in cash.* The term “wages” does not include remuneration paid in any medium other than cash for agricultural labor. For meaning of the term “cash remuneration”, see paragraph (f) of the regulations in this section.

(c) *Cash payments.* (1) The term *wages* does not include cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless—

(i) The cash remuneration paid in such year by the employer to the employee for such labor is \$150 or more; or

(ii) The employer’s expenditures for agricultural labor in such year equal or exceed \$2,500, except that this paragraph (c)(1)(ii) shall not apply in determining whether remuneration paid to an employee constitutes wages for agricultural labor if such employee—

(A) Is employed as a hand-harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment;

(B) Commutes daily from his permanent residence to the farm on which he is so employed; and

(C) Has been employed in agriculture less than 13 weeks during the preceding calendar year.

(2) The application of the provisions of paragraph (c)(1) of this section may be illustrated by the following example:

Example. Employer X pays A \$140 in cash for agricultural labor in calendar year 2004. X makes no other payments to A during the year and makes no other payment for agricultural labor to any other employee. Employee A is not employed as a hand-harvest laborer. Neither the \$150-cash-remuneration test nor the \$2,500-employer’s-expenditures-for-agricultural-labor test is met. Accordingly, the remuneration paid by X to A is not subject to the taxes. If in 2004 X had paid A \$140 in cash for agricultural labor and had made expenditures of \$2,360 or more to other employees for agricultural labor, the \$140 paid by X to A would have been subject to tax because the \$2,500-employer’s-expenditures-for-agricultural-labor test would have been met. Or, if X had paid A \$150 in cash in 2004 and made no other payments to any other employee for agricultural labor, the \$150 paid by X to A would have been subject to tax because the \$150-cash-remuneration test would have been met.

(d) *Application of cash-remuneration test.* (1) If an employee receives cash remuneration from an employer both for services which constitute agricultural labor and for services which do not constitute agricultural labor, only the amount of such remuneration which is attributable to agricultural labor shall be included in determining whether cash remuneration of \$150 or more has been paid in the calendar year by the employer to the employee for agricultural labor. The following example illustrates this paragraph (d)(1):

Example. Employer X operates a store and also is engaged in farming operations. Employee A, who regularly performs services for X in connection with the operation of the store, works on X’s farm when additional help is required for the farm activities. In the calendar year 2004, X pays A \$140 in cash for services performed in agricultural labor, and \$4,000 for services performed in connection with the operation of the store. X has no additional expenditures for agricultural labor in 2004. Since the cash remuneration paid by X to A in the calendar year 2004 for agricultural labor is less than \$150, the \$150-cash-remuneration test is not met. The \$140 paid by X to A in 2004 for agricultural labor does not constitute wages and is not subject to the taxes.

(2) The test relating to cash remuneration of \$150 or more is based on the cash remuneration paid in a calendar year rather than on the remuneration earned during a calendar year. It is immaterial if such cash remuneration is paid in a calendar year other than the year in which the agricultural labor is performed. The following example illustrates this paragraph (d)(2):

Example. Employer X pays cash remuneration of \$150 in the calendar year 2004 to employee A for agricultural labor. Such remuneration constitutes wages even though \$10 of such amount represents payment for agricultural labor performed by A for X in December 2003.

(3) In determining whether \$150 or more has been paid to an employee for agricultural labor, only cash remuneration for such labor shall be taken into account. If an employee receives cash remuneration in any one calendar year from more than one employer for agricultural labor, the cash-remuneration test is to be applied with respect to the remuneration received by the employee

from each employer in such calendar year for such labor.

(e) *Application of employer's-expenditures-for-agricultural-labor test.* (1) If an employer has expenditures in a calendar year for agricultural labor and for non-agricultural labor, only the amount of such expenditures for agricultural labor shall be included in determining whether the employer's expenditures for agricultural labor in such year equal or exceed \$2,500. The following example illustrates this paragraph (e)(1):

Example. Employer X operates a store and also is engaged in farming operations. Employee A, who regularly performs services for X in connection with the operation of the store, works on X's farm when additional help is required for the farm activities. In calendar year 2004, X pays A \$140 in cash for services performed in agricultural labor, and \$4,000 for services performed in connection with the operation of the store. X has no additional expenditures for agricultural labor in 2004. Since X's expenditures for agricultural labor in 2004 are less than \$2,500, the employer's-expenditures-for-agricultural-labor test is not met. The \$140 paid by X to A in 2004 for agricultural labor does not constitute wages and is not subject to the taxes.

(2) The test relating to an employer's expenditures of \$2,500 or more for agricultural labor is based on the expenditures paid by the employer in a calendar year rather than on the expenses incurred by the employer during a calendar year. It is immaterial if the expenditures are paid in a calendar year other than the year in which the agricultural labor is performed. The following example illustrates this paragraph (e)(2):

Example. Employer X employs A to construct fences on a farm owned by X. The work constitutes agricultural labor and is performed over the course of November and December 2003. A is not employed by X at any other time, however X does have other employees to whom X pays remuneration of \$2,000 for agricultural labor in 2003. X pays A \$140 in cash in November 2003 and \$140 in cash in January 2004, in full payment for the work. The \$140 payment to A made in November is not wages for calendar year 2003 because the \$150-cash-remuneration test is not met and X's total expenditures for agricultural labor for such year are not equal to or in excess of \$2,500. The \$140 payment to A made in January is not wages for 2004 because the \$150 cash-remuneration test is not met. However, if X pays additional remuneration to employees for agricultural labor in 2004 that equals or exceeds \$2,360, the employer's-expenditures-for-agricultural-labor test will be met and the \$140 paid by X to A in 2004 will be considered wages. It is immaterial that the work was performed in 2003.

(f) *Meaning of "cash remuneration."* Cash remuneration includes checks and other monetary media of exchange. Cash remuneration does not include payments made in any other medium, such as lodging, food, clothing, car tokens, transportation passes or tickets, farm products, or other goods or commodities.

(g) *Cross references.* (1) For provisions relating to deductions of employee tax or amounts equivalent to the tax from cash payments for agricultural labor, see § 31.3102-1.

(2) For provisions relating to the time of payment of wages for agricultural labor, see § 31.3121(a)-2.

(3) For provisions relating to records to be kept with respect to agricultural labor, see paragraph (b) of § 31.6001-2.

(h) *Effective dates.* The provisions of this section apply to any payment for agricultural labor made on or after January 1, 1988. For rules applicable to any payment for agricultural labor made prior to January 1, 1988, see § 31.3121(a)(8)-1 in effect at such time (see 26 CFR part 31 contained in the edition of 26 CFR parts 30 to 39, revised as of April 1, 2006).

[T.D. 6744, 29 FR 8308, July 2, 1964, as amended by T.D. 9266, 71 FR 35155, June 19, 2006]

§ 31.3121(a)(9)-1 Payments to employees for nonwork periods.

§ 31.3121(a)(9)-1 Payments to employees for nonwork periods.

(a) The term "wages" does not include any payment (other than vacation or sick pay) made by an employer to an employee for a period throughout which the employment relationship exists between the employer and the employee, but in which the employee does not work (other than being subject to call for the performance of work) for the employer, if such payment is made after the calendar month in which—

(1) The employee attains age 65, if the employee is a man to whom the payment is made before January 1975, or if the employee is a woman to whom the payment is made before November 1956, or

(2) The employee attains age 62, if the employee is a man to whom the