

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.**

(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

payment is made after December 1974, or if the employee is a woman to whom the payment is made after October 1956.

(b) Vacation or sick pay is not within this exclusion from wages. If the employee does any work for the employer in the period for which the payment is made, no remuneration paid by such employer to such employee with respect to such period is within this exclusion from wages.

*Example.* Mrs. A, an employee of X, attained the age of 62 on September 15, 1956, and discontinued the performance of regular work for X on September 30, 1956. Their employment relationship continued for several years until Mrs. A's death, and X paid Mrs. A \$50 per month as consideration for Mrs. A's agreement to work when asked by X. The payment for each month was made on the first day of each succeeding month. After September 30, 1956, the only work performed by Mrs. A for X was performed on one day in October 1956. The payment made by X to Mrs. A on November 1 (for October 1956) is not excluded from wages under this exception, but the payments made thereafter are excluded from wages. The payment on November 1 was not excluded because Mrs. A worked for X on one day in October 1956. (Inasmuch as Mrs. A had attained age 62 in September 1956, the November 1 payment would have been excluded if Mrs. A had not performed any work for X in October 1956.)

[T.D. 6744, 29 FR 8309, July 2, 1964, as amended by T.D. 7373, 40 FR 30957, July 24, 1975; 40 FR 32831, Aug. 5, 1975]

**§ 31.3121(a)(10)-1 Payments to certain home workers.**

(a) The term *wages* does not include remuneration paid by an employer in any calendar year to an employee for service performed as a home worker who is an employee by reason of the provisions of section 3121(d)(3)(C) (see § 31.3121(d)-1(d)), unless the cash remuneration paid in such calendar year by the employer to the employee for such services is \$100 or more. The test relating to cash remuneration of \$100 or more is based on remuneration paid in a calendar year rather than on remuneration earned during a calendar year. If cash remuneration of \$100 or more is paid in a particular calendar year, it is immaterial whether such remuneration is in payment for services performed during the year of payment or during any other year.

(b) The application of paragraph (a) of this section may be illustrated by the following example:

*Example.* A, a home worker, performs services for X, a manufacturer, in 2003 and 2004. In the performance of the home work A is an employee by reason of section 3121(d)(3)(C). In March 2004, A returns to X articles made by A at home from materials received by A from X in 2003. X pays A cash remuneration of \$100 for such work when the finished articles are delivered. The \$100 includes \$10 which represents remuneration for home work performed by A in 2003. The entire \$100 is subject to the taxes. Any additional cash remuneration paid by X to A in 2004 for such services is also subject to the taxes.

(c) In the event an employee receives remuneration in any one calendar year from more than one employer for services performed as a home worker of the character described in paragraph (a) of this section, the regulations in this section are to be applied with respect to the remuneration received by the employee from each employer in such calendar year for such services. This exclusion from wages has no application to remuneration paid for services performed as a home worker who is an employee under section 3121(d)(2) (see § 31.3121(d)-1(c)) relating to common law employees.

(d) Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as clothing, car tokens, transportation passes or tickets, or other goods or commodities, is disregarded in determining whether the \$100 cash-remuneration test is met. If the cash remuneration paid in any calendar year by an employer to an employee for services performed as a home worker of the character described in paragraph (a) of this section is \$100 or more, then no remuneration, whether in cash or in any medium other than cash, paid by the employer to the employee in such calendar year for such services is excluded from wages under this exception.

(e)(1) For provisions relating to deductions of employee tax or amounts equivalent to the tax from cash payments for services performed as a home worker within the meaning of section 3121(d)(3)(C), see § 31.3102-1.

(2) For provisions relating to the time of payment of wages for services