

(d)(1) The provisions of paragraphs (a) and (b) of this section apply to any payment of wages made on or after January 1, 1955.

(2) The provisions of paragraph (c) of this section that apply to any payment of wages made for service not in the course of the employer's trade or business or for service performed as a home worker within the meaning of section 3121(d)(3)(C) apply to any such payment made on or after January 1, 1978. The provisions of paragraph (c) of this section that apply to any payment of wages made for domestic service in a private home of the employer apply to any such payment made on or after January 1, 1994. The provisions of paragraph (c) of this section that apply to any payment of wages made for agricultural labor apply to any such payment made on or after January 1, 1988. For rules applicable to any payment of wages for these services made prior to the dates set forth in this paragraph (d)(2), see § 31.3121(a)-2 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. 6744, 29 FR 8306, July 2, 1964; T.D. 7001, 34 FR 999, Jan. 23, 1969; T.D. 9266, 71 FR 35154, June 19, 2006]

**§ 31.3121(a)-3 Reimbursement and other expense allowance amounts.**

(a) *When excluded from wages.* If a reimbursement or other expense allowance arrangement meets the requirements of section 62(c) of the Code and § 1.62-2 and the expenses are substantiated within a reasonable period of time, payments made under the arrangement that do not exceed the substantiated expenses are treated as paid under an accountable plan and are not wages. In addition, if both wages and the reimbursement or other expense allowance are combined in a single payment, the reimbursement or other expense allowance must be identified either by making a separate payment or by specifically identifying the amount of the reimbursement or other expense allowance.

(b) *When included in wages*—(1) *Accountable plans*—(i) *General rule.* Except as provided in paragraph (b)(1)(ii) of this section, if a reimbursement or

other expense allowance arrangement satisfies the requirements of section 62(c) and § 1.62-2, but the expenses are not substantiated within a reasonable period of time or amounts in excess of the substantiated expenses are not returned within a reasonable period of time, the amount paid under the arrangement in excess of the substantiated expenses is treated as paid under a nonaccountable plan, is included in wages, and is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period.

(ii) *Per diem or mileage allowances.* If a reimbursement or other expense allowance arrangement providing a per diem or mileage allowance satisfies the requirements of section 62(c) and § 1.62-2, but the allowance is paid at a rate for each day or mile of travel that exceeds the amount of the employee's expenses deemed substantiated for a day or mile of travel, the excess portion is treated as paid under a nonaccountable plan and is included in wages. In the case of a per diem or mileage allowance paid as a reimbursement, the excess portion is subject to withholding and payment of employment taxes when paid. In the case of a per diem or mileage allowance paid as an advance, the excess portion is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the expenses with respect to which the advance was paid (i.e., the days or miles of travel) are substantiated. The Commissioner may, in his discretion, prescribe special rules in pronouncements of general applicability regarding the timing of withholding and payment of employment taxes on per diem and mileage allowances.

(2) *Nonaccountable plans.* If a reimbursement or other expense allowance arrangement does not satisfy the requirements of section 62(c) and § 1.62-2 (e.g., the arrangement does not require expenses to be substantiated or require amounts in excess of the substantiated expenses to be returned), all amounts paid under the arrangement are treated as paid under a nonaccountable plan, are included in wages, and are subject

### § 31.3121(a)(1)-1

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

to withholding and payment of employment taxes when paid.

(c) *Effective dates.* This section generally applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990. Paragraph (b)(1)(ii) of this section applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after January 1, 1991, with respect to expenses paid or incurred on or after January 1, 1991.

[T.D. 8324, 55 FR 51696, Dec. 17, 1990]

#### § 31.3121(a)(1)-1 Annual wage limitation.

(a) *In general.* (1) The term “wages” does not include that part of the remuneration paid by an employer to an employee within any calendar year—

(i) After 1954 and before 1959 which exceeds the first \$4,200 of remuneration,

(ii) After 1958 and before 1966 which exceeds the first \$4,800 of remuneration,

(iii) After 1965 and before 1968 which exceeds the first \$6,600 of remuneration,

(iv) After 1967 and before 1972 which exceeds the first \$7,800 of remuneration,

(v) After 1971 and before 1973 which exceeds the first \$9,000 of remuneration,

(vi) After 1972 and before 1974 which exceeds the first \$10,800 of remuneration,

(vii) After 1973 and before 1975 which exceeds the first \$13,200 of remuneration, or

(viii) After 1974 which exceeds the amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective for such calendar year

(exclusive of remuneration excepted from wages in accordance with paragraph (j) of § 31.3121(a)-1 or §§ 31.3121(a)(2)-1 to 31.3121(a)(15)-1, inclusive) paid within the calendar year by an employer to the employee for employment performed for him at any time after 1936. For provisions relating to the treatment of tips for purposes of

the annual wage limitation see § 31.3121(q)-1.

(2) The annual wage limitation applies only if the remuneration received during any 1 calendar year by an employee from the same employer for employment performed after 1936 exceeds the amount of such limitation. The limitation in such case relates to the amount of remuneration received during any 1 calendar year for employment after 1936 and not to the amount of remuneration for employment performed in any 1 calendar year.

*Example.* Employee A, in 1967 receives \$7,000 from employer B in part payment of \$8,000 due him from employment performed in 1967. In 1968 A receives from employer B the balance of \$1,000 due him for employment performed in 1967, and thereafter in 1968 also receives \$7,000 for employment performed in 1968 for employer B. The first \$6,600 of the \$7,000 received during 1967 is subject to the taxes in 1967. The remaining \$400 received in 1967 is not included as wages and is not subject to the taxes. The balance of \$1,000 received in 1968 for employment during 1967 is subject to the taxes during 1968 as is also the first \$6,800 of the \$7,000 thereafter received in 1968 (\$1,000 plus \$6,800 totaling \$7,800, which is the annual wage limitation applicable to remuneration received in 1968 by an employee from any one employer). The remaining \$200 received in 1968 is not included as wages and is not subject to the taxes.

(3) If during a calendar year the employee receives remuneration from more than one employer, the annual wage limitation does not apply to the aggregate remuneration received from all of such employers, but instead applies to the remuneration received during such calendar year from each employer with respect to employment after 1936. In such case the first remuneration received in any calendar year after 1974 up to the amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) (the first \$13,200 received in 1974, the first \$10,800 received in 1973, the first \$9,000 received in 1972, the first \$7,800 received in any calendar year after 1967 and before 1972, the first \$6,600 received in any calendar year after 1965 and before 1968, the first \$4,800 received in any calendar year after 1958 and before 1966, or the first \$4,200 received in any calendar year after 1954 and before 1959) from each