

§ 31.3121(b)(5)-1

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

services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

(d) Services performed within the United States on or in connection with a non-American vessel or aircraft for an employer by an employee who is not a citizen of the United States are excepted from employment, irrespective of whether the employer is or is not an American employer, provided the employee also is employed by such employer on and in connection with the vessel or aircraft when outside the United States. Services performed within the United States on or in connection with a non-American vessel or aircraft by an employee for an employer who is not an American employer also are excepted from employment, irrespective of whether the employee is or is not a citizen of the United States, provided the employee also is employed by such employer on and in connection with the vessel or aircraft when outside the United States. Services performed within the United States on or in connection with a non-American vessel or aircraft for an American employer by an employee who is a citizen of the United States are not excepted from employment under section 3121(b)(4), irrespective of whether the employee is employed by such employer on and in connection with the vessel or aircraft when outside the United States. Further, section 3121(b)(4) does not except from employment services performed within the United States for an employer, whether or not an American employer, on or in connection with a non-American vessel or aircraft by an employee, whether or not a citizen of the United States, who is not also employed by such employer on and in connection with the vessel or aircraft when outside the United States.

(e) Services performed outside the United States on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, by a citizen of the United States as an employee for an American employer are not excepted from employment under section 3121(b)(4), irrespective of whether the employee is employed on and in connection with such vessel or aircraft

when outside the United States. Services performed outside the United States on or in connection with a vessel not an American vessel or on or in connection with an aircraft not an American aircraft, either by an employee who is not a citizen of the United States or for an employer who is not an American employer, do not, in any event, constitute employment. See paragraph (c) of § 31.3121(b)-3, relating to services performed outside the United States which constitute employment.

(f) See paragraph (c)(2)(v) of § 31.3121(b)-3 for definitions of "vessel" and "aircraft", § 31.3121(f)-1, for definitions of "American vessel" and "American aircraft", § 31.3121(e)-1, for definition of "citizen of the United States", and § 31.3121(h)-1, for definition of "American employer".

§ 31.3121(b)(5)-1 Services in employ of an instrumentality of the United States specifically exempted from the employer tax.

Services performed in the employ of an instrumentality of the United States are excepted from employment if such instrumentality is exempt from the employer tax imposed by section 3111 by virtue of any other provision of law which specifically refers to such section 3111 or the corresponding section of prior law (section 1410 of the Internal Revenue Code of 1939) in granting exemption from the employer tax. This exception does not operate to exclude from employment services performed in the employ of an instrumentality of the United States unless the Congress has granted to such instrumentality a specific exemption from the tax imposed by section 3111 or the corresponding section of prior law. For provisions which make general exemptions from Federal taxation ineffectual as to the employer tax imposed by section 3111, see § 31.3112-1. For other exceptions from employment applicable with respect to services performed in the employ of an instrumentality of the United States, see § 31.3121(b)(6)-1.

§ 31.3121(b)(6)-1 Services in employ of United States or instrumentality thereof.

(a) *In general.* This section relates to services performed in the employ of the