

**Internal Revenue Service, Treasury****§ 31.3221-2****TAX ON EMPLOYERS****§ 31.3221-1 Measure of employer tax.**

(a) *General Rule*—The employer tax is measured by the amount of compensation paid by an employer to its employees. For provisions relating to compensation, see § 31.3231(e)-1. For provisions relating to the circumstances under which certain compensation is to be disregarded for purposes of determining the employer tax, see paragraphs (b) (1) and (2) of § 31.3231(e)-1.

(b) *Payments by two or more employers in excess of annual compensation limitation.* For rules relating to payments by two or more employers in excess of the annual compensation limitation, see § 31.3121(a)(1)-1.

(c) *Underpayments or overpayments.* Any underpayment or overpayment of employer tax resulting from the employer's inability to determine, at the time such tax is paid, the correct amount of compensation with respect to which the tax should be paid shall be corrected in accordance with the provisions of Subpart G of the regulations in this part relating to adjustments, credits, refunds, and abatements.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6541, 26 FR 555, Jan. 20, 1961; T.D. 8582, 59 FR 66190, Dec. 23, 1994]

**§ 31.3221-2 Rates and computation of employer tax.**

(a) *Rates*—(1)(i) *Tier 1 tax.* The Tier 1 employer tax rate equals the sum of the tax rates in effect under section 3111(a), relating to old-age, survivors, and disability insurance, and section 3111(b), relating to hospital insurance. The Tier 1 employer tax rate is applied to compensation up to the contribution base described in section 3231(e)(2)(B)(i). The contribution base is determined under section 230 of the Social Security Act and is identical to the old-age, survivors, and disability insurance wage base and the hospital insurance wage base, respectively, under the Federal Insurance Contributions Act.

(ii) *Example.* The rule in paragraph (a)(1)(i) of this section is illustrated by the following example.

*Example.* R's employee, A, received compensation of \$60,000 in 1992. The section 3111(a) rate of 6.2 percent would be applied to

compensation was received), and not the 29.77 percent rate (15.02 percent plus 14.75 percent) in effect for 1989 (the year the services were performed).

(c) (1) *Rule where compensation is received both as an employee representative and employee.* The following rule applies to an individual who renders service both as an employee representative and as an employee. The employee representative tax is imposed on compensation received as an employee representative under the rules described in § 31.3211-2. The employee tax is imposed on compensation received as an employee under the rules described in § 31.3201-2. However, if the total compensation received is greater than the applicable contribution base, the employee representative tax is imposed on the amount equal to the contribution base less the amount received for services rendered as an employee.

(2) *Example.* The rule in paragraph (c)(1) of this section is illustrated by the following example.

*Example.* C performed services both as an employee and an employee representative in 1992. C received compensation of \$40,000 as an employee and \$20,000 as an employee representative. C's entire compensation of \$40,000 is subject to tax under the rules described in § 31.3201-2. The amount of employee representative compensation subject to the section 3101(a) and the section 3111(a) rate is \$15,500 (\$55,500 - \$40,000). The entire \$20,000 is subject to the sections 3101(b) and 3111(b) rates since the combined compensation is less than \$130,200, the applicable contribution base for 1992. The amount of the employee representative compensation subject to the section 3211(a)(2) rate is \$1,400 (\$41,400 - \$40,000).

[T.D. 8582, 59 FR 66190, Dec. 23, 1994]

**§ 31.3221-3 Employee representative supplemental tax.**

See paragraphs (a), (b), and (c) of § 31.3221-3 for rules applicable to the supplemental tax for each work-hour for which compensation is paid to an employee representative for services rendered as an employee representative.

[T.D. 8525, 59 FR 9666, Mar. 1, 1994]

**§ 31.3221-4 Determination of compensation.**

See § 31.3231(e)-1 for regulations applicable to compensation.

### §31.3221-3

*A's* compensation up to \$55,500, the applicable contribution base for 1992. The section 3111(b) rate of 1.45 percent would be applied to the entire \$60,000 of *A's* compensation because the applicable contribution base for 1992 is \$130,200.

(2)(i) *Tier 2 tax.* The Tier 2 employer tax rate equals the percentage set forth in section 3221(b) of the Internal Revenue Code. This rate is applied up to the contribution base described in section 3231(e)(2)(B)(ii).

(ii) *Example.* The rule in paragraph (a)(2)(i) of this section is illustrated by the following example.

*Example.* R's employee, *A*, received compensation of \$60,000 in 1992. The section 3221(b) rate of 16.10 percent would be applied to *A's* compensation up to \$41,400, the applicable contribution base for 1992.

(3) *Supplemental Annuity Tax.* The supplemental annuity tax for each work-hour for which compensation is paid by an employer for services rendered during any calendar quarter by employees is imposed at the tax rate determined each calendar quarter by the Railroad Retirement Board. See also §31.3221-3.

(b)(1) *Computation.* The employer tax is computed by multiplying the amount of the compensation with respect to which the employer tax is imposed by the rate applicable to such compensation, as determined under paragraph (a) of this section. The applicable rate is the rate in effect at the time the compensation is paid. For rules relating to the time of payment, see §31.3121(a)-2(a) and (b).

(2) *Example.* The rule in paragraph (b)(1) of this section is illustrated by the following example.

*Example.* In 1990, R's employee *A* received \$1,000 as remuneration for services performed for *R* in 1989. The employer tax is payable at the rate of 23.75 percent (7.65 percent plus 16.10 percent) in effect for 1990 (the year the compensation was received) and not the 23.61 percent rate (7.51 percent plus 16.10 percent) in effect for 1989 (the year the services were performed).

[T.D. 8582, 59 FR 66190, Dec. 23, 1994]

#### §31.3221-3 Supplemental tax.

(a) *Introduction—(1) In general.* Section 3221(c) imposes an excise tax on every employer, as defined in section 3231(a) and §31.3231(a)-1, with respect to

#### 26 CFR Ch. I (4-1-10 Edition)

individuals employed by the employer. The tax is imposed for each work-hour for which the employer pays compensation, as defined in section 3231(e) and §31.3231(e)-1, for services rendered to the employer during a calendar quarter. This §31.3221-3 provides rules for determining the number of taxable work-hours.

(2) *Overview.* Paragraph (b) of this section defines *work-hours*. Paragraph (c) of this section demonstrates the calculation of work-hours. Paragraph (d) of this section offers a safe harbor calculation of work-hours for use by any employer in lieu of calculating the number of work-hours for each employee.

(b) *Definition of work-hours—(1) In general.* For purposes of section 3221(c) and this section, *work-hours* are hours for which the employee is compensated, whether or not the employee performs services.

(i) *Payments included in work-hours.* Work-hours include regular time worked; overtime; time paid for vacations and holidays; time allowed for meals; away-from-home terminal time; called and not used, runaround, and deadheading time; time for attending court, participating in investigations, and attending claim and safety meetings; and guaranteed time not worked. Work-hours also include conversion hours, that is, compensation converted into work-hours. Conversion hours may be derived from payment by the mile or by the piece. Work-hours also include time for which the employee is paid for periods of absence not due to sickness or accident disability, such as for routine medical and dental examinations or for time lost.

(ii) *Payments excluded from work-hours.* Certain kinds of payments are not subject to conversion into work-hours. These include those payments that are specifically excluded from *compensation* within the meaning of section 3231(e), such as certain sick pay payments (section 3231(e)(1)(i)); tips (section 3231(e)(1)(ii)); and amounts paid specifically (either as an advance, as reimbursement, or allowance) for traveling expenses (section 3231(e)(1)(iii)). Traveling expenses paid under a nonaccountable plan are excluded from work-hours even though