

§ 31.3306(b)(13)-1 Payments or benefits under a qualified educational assistance program.

The term “wages” does not include any payment made, or benefit furnished, to or for the benefit of an employee in a taxable year beginning after December 31, 1978, if at the time of such payment or furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127.

[T.D. 7898, 48 FR 31019, July 6, 1983]

§ 31.3306(c)-1 Employment; services performed before 1955.

(a) Services performed after 1938 and before 1955 constitute employment under section 3306(c) if such services were employment under the law applicable to the period in which they were performed.

(b) The tax applies with respect to remuneration paid by an employer after 1954 for services performed after 1938 and before 1955, as well as for services performed after 1954, to the extent that the remuneration and services constitute wages and employment. See §§ 31.3306(b)-1 to 31.3306(b)(8)-1, inclusive, relating to wages.

(c) Determination of whether services performed after 1938 and before 1955 constitute employment shall be made in accordance with the provisions of law applicable to the period in which they were performed and of the regulations thereunder. The regulations applicable in determining whether services performed after 1938 and before 1955 constitute employment are as follows:

(1) Services performed in 1939—26 CFR (1939) Part 400 (Regulations 90).

(2) Services performed after 1939 and before 1955—26 CFR (1939) Part 403 (Regulations 107).

§ 31.3306(c)-2 Employment; services performed after 1954.

(a) *In general.* Whether services performed after 1954 constitute employment is determined under subsections (c) and (n) of section 3306.

(b) *Services performed within the United States.* Services performed after 1954 within the United States (see § 31.3306(j)-1) by an employee for the person employing him, unless specifi-

cally excepted under section 3306(c), constitute employment. With respect to services performed within the United States, the place where the contract of service is entered into is immaterial. The citizenship or residence of the employee or of the person employing him also is immaterial except to the extent provided in any specific exception from employment. Thus, the employee and the person employing him may be citizens and residents of a foreign country and the contract of service may be entered into in a foreign country, and yet, if the employee under such contract performs services within the United States, there may be to that extent employment.

(c) *Services performed outside the United States—(1) In general.* Except as provided in subparagraph (2) of this paragraph, services performed outside the United States (see § 31.3306(j)-1) do not constitute employment.

(2) *On or in connection with an American vessel or American aircraft.* (i) This subparagraph relates to services performed after 1954 “on or in connection with” an American vessel, and to services performed after 1961 “on or in connection with” an American aircraft to the extent that the remuneration for the latter services is paid after 1961. Such services performed outside the United States by an employee for the person employing him constitute employment if:

(a) The employee is also employed “on and in connection with” such vessel or aircraft when outside the United States; and

(b) The services are performed under a contract of service, between the employee and the person employing him, which is entered into within the United States, or during the performance of the contract under which the services are performed and while the employee is employed on the vessel or aircraft it touches at a port within the United States; and

(c) The services are not excepted under section 3306(c). (See particularly § 31.3306(c)(17)-1, relating to fishing.)

(ii) An employee performs services on and in connection with the vessel or aircraft if he performs services on the vessel or aircraft which are also in connection with the vessel or aircraft.