

**§ 31.3306(b)-1**

**26 CFR Ch. I (4-1-12 Edition)**

not counted with respect to any services during the pay period.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 7037, 35 FR 6709, Apr. 28, 1970]

**§ 31.3306(b)-1 Wages.**

(a) *Applicable law and regulations*—(1) *Remuneration paid after 1954.* Whether remuneration paid after 1954 for employment performed after 1938 constitutes wages is determined under section 3306(b). Accordingly, only remuneration paid after 1954 for employment performed after 1938 is covered by this section of the regulations and by the sections relating to the statutory exclusions from wages (§§ 31.3306(b)(1)-1 to 31.3306(b)(10)-1).

(2) *Remuneration paid after 1939 and before 1955.* Whether remuneration paid after 1939 and before 1955 for employment performed after 1938 constitutes wages shall be determined in accordance with the applicable provisions of law and of 26 CFR (1939) Part 403 (Regulations 107).

(3) *Remuneration paid in 1939.* Whether remuneration paid in 1939 for employment performed after 1938 constitutes wages shall be determined in accordance with the applicable provisions of law and of 26 CFR (1939) Part 400 (Regulations 90).

(b) The term “wages” means all remuneration for employment unless specifically excepted under section 3306(b) (see §§ 31.3306(b)(1)-1 to 31.3306(b)(10)-1, inclusive) or paragraph (j) of this section.

(c) The name by which the remuneration for employment is designated is immaterial. Thus, salaries, fees, bonuses, and commissions are wages if paid as compensation for employment.

(d) The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus, it may be paid on the basis of piecework or a percentage of profits; and it may be paid hourly, daily, weekly, monthly, or annually.

(e) Except in the case of remuneration paid for services not in the course of the employer’s trade or business (see § 31.3306(b)(7)-1), the medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as for ex-

ample, goods, lodging, food, or clothing. Remuneration paid in items other than cash shall be computed on the basis of the fair value of such items at the time of payments.

(f) Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called “courtesy” discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as remuneration for employment if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of his employees. The term “facilities or privileges”, however, does not ordinarily include the value of meals or lodging furnished, for example, to restaurant or hotel employees, or to seamen or other employees aboard vessels, since generally these items constitute an appreciable part of the total remuneration of such employees.

(g) Amounts of so-called “vacation allowances” paid to an employee constitute wages. Thus, the salary of an employee on vacation, paid notwithstanding his absence from work, constitutes wages.

(h) Amounts paid specifically—either as advances or reimbursements—for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment. For amounts that are received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990, see § 31.3306(b)-2.

(i) Remuneration paid by an employer to an individual for employment, unless such remuneration is specifically excepted under section 3306(b), constitutes wages even though at the time paid the individual is no longer an employee.

*Example.* A is employed by B, an employer, during the month of June 1955 in employment and is entitled to receive remuneration

of \$100 for the services performed for B during the month. A leaves the employ of B at the close of business on June 30, 1955. On July 15, 1955 (when A is no longer an employee of B), B pays A the remuneration of \$100 which was earned for the services performed in June. The \$100 is wages, and the tax is payable with respect thereto.

(j) In addition to the exclusions specified in §§ 31.3306(b)(1)-1 to 31.3306(b)(10)-1, inclusive, the following types of payments are excluded from wages:

(1) Remuneration for services which do not constitute employment under section 3306(c).

(2) Remuneration for services which are deemed not to be employment under section 3306(d) (§ 31.3306(d)-1).

(3) Tips or gratuities paid directly to an employee by a customer of an employer, and not accounted for by the employee to the employer.

(k) For provisions relating to the treatment of deductions from remuneration as payments of remuneration, see § 31.3307-1.

(l) *Split-dollar life insurance arrangements.* Except as otherwise provided under section 3306(r), see §§ 1.61-22 and 1.7872-15 of this chapter for rules relating to the treatment of split-dollar life insurance arrangements.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6658, 28 FR 6636, June 27, 1963; T.D. 7375, 40 FR 42350, Sept. 12, 1975; T.D. 8276, 54 FR 51028, Dec. 12, 1989; T.D. 8324, 55 FR 51697, Dec. 17, 1990; T.D. 9092, 68 FR 54361, Sept. 17, 2003]

**§ 31.3306(b)-1T Question and answer relating to the definition of wages in section 3306(b) (Temporary).**

The following question and answer relates to the definition of wages in section 3306(b) of the Internal Revenue Code of 1954, as amended by section 531(d)(3) of the Tax Reform Act of 1984 (98 Stat. 885):

*Q-1:* Are fringe benefits included in the definition of wages under section 3306(b)?

*A-1:* Yes, unless specifically excluded from the definition of "wages" pursuant to section 3306(b) (1) through (16). For example, a fringe benefit provided to or on behalf of an employee is excluded from the definition of "wages" if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such ben-

efit from income under section 117 or 132.

[T.D. 8004, 50 FR 755, Jan. 7, 1985]

**§ 31.3306(b)-2 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 satisfied 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