

also to services connected with the vessel or aircraft which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

(iv) Services performed by a member of the crew or other employee whose contract of service is not entered into within the United States, and during the performance of which and while the employee is employed on the vessel or aircraft it does not touch at a port within the United States, do not constitute employment, notwithstanding that service performed by other members of the crew or other employees on or in connection with the vessel or aircraft may constitute employment.

(v) A vessel includes every description of watercraft, or other contrivance, used as a means of transportation on water. An aircraft includes every description of craft, or other contrivance, used as a means of transportation through the air. In the case of an aircraft, the term "port" means an airport. An airport means an area on land or water used regularly by aircraft for receiving or discharging passengers or cargo. For definitions of "American vessel" and "American aircraft", see § 31.3306(m)-1.

(vi) With respect to services performed outside the United States on or in connection with an American vessel or American aircraft, the citizenship or residence of the employee is immaterial, and the citizenship or residence of the employer is material only in case it has a bearing in determining whether a vessel is an American vessel.

[T.D. 6658, 28 FR 6636, June 27, 1963]

§ 31.3306(c)-3 Employment; excepted services in general.

(a) Services performed by an employee for the person employing him do not constitute employment for purposes of the tax if they are specifically excepted from employment under any of the numbered paragraphs of section 3306(c). Services so excepted do not constitute employment for purposes of the tax even though they are performed within the United States, or are performed outside the United States on or in connection with an American vessel or American aircraft. If not other-

wise provided in the regulations relating to the numbered paragraphs of section 3306(c), such regulations apply with respect to services performed after 1954.

(b) The exception attaches to the services performed by the employee and not to the employee as an individual; that is, the exception applies only to the services rendered by the employee in an excepted class.

Example. A is an individual who is employed part time by B to perform services which constitute "agricultural labor" (see § 31.3306 (k)-1). A is also employed by C part time to perform services as a grocery clerk in a store owned by him. While A's services which constitute "agricultural labor" are expected, the exception does not embrace the services performed by A as a grocery clerk in the employ of C and the latter services are not excepted from employment.

(c) For provisions relating to the circumstances under which services which are excepted are nevertheless deemed to be employment, and relating to the circumstances under which services which are not excepted are nevertheless deemed not to be employment, see § 31.3306(d)-1.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6658, 28 FR 6637, June 27, 1963]

§ 31.3306(c)(1)-1 Agricultural labor.

Services performed by an employee for the person employing him which constitute "agricultural labor" as defined in section 3306(k) are excepted from employment. For provisions relating to the definition of the term "agricultural labor", see § 31.3306(k)-1.

§ 31.3306(c)(2)-1 Domestic service.

(a) *In a private home.* (1) Services of a household nature performed by an employee in or about a private home of the person by whom he is employed are excepted from employment. A private home is a fixed place of abode of an individual or family. A separate and distinct dwelling unit maintained by an individual in an apartment house, hotel, or other similar establishment may constitute a private home. If a dwelling house is used primarily as a boarding or lodging house for the purpose of supplying board or lodging to the public as a business enterprise, it is

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not a private home and the services performed therein are not excepted.

(2) In general, services of a household nature in or about a private home include services performed by cooks, waiters, butlers, housekeepers, governesses, maids, valets, baby sitters, janitors, laundresses, furnacemen, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobile for family use.

(b) *In a local college club or local chapter of a college fraternity or sorority.* (1) Services of a household nature performed by an employee in or about the club rooms or house of a local college club or of a local chapter of a college fraternity or sorority by which he is employed are excepted from employment. A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter. If the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for the purpose of supplying board or lodging to students or the public as a business enterprise, the services performed therein are not within the exception.

(2) In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include services rendered by cooks, waiters, butlers, maids, janitors, laundresses, furnacemen, handymen, gardeners, housekeepers, and housemothers.

(c) *Services not excepted.* Services not of a household nature, such as services performed as a private secretary, tutor, or librarian, even though performed in the employer's private home or in a local college club or local chapter of a college fraternity or sorority, are not within the exception. Services of a household nature are not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs), hotels, hospitals, eleemosynary institutions, or commercial offices or establishments.

§ 31.3306(c)(3)-1 Services not in the course of employer's trade or business.

(a) Services not in the course of the employer's trade or business performed by an employe for an employer in a calendar quarter are excepted from employment unless—

(1) The cash remuneration paid for such services performed by the employee for the employer in the calendar quarter is \$50 or more; and

(2) Such employee is regularly employed in the calendar quarter by such employer to perform such services.

Unless the tests set forth in both paragraphs (a)(1) and (2) of this section are met, the services are excepted from employment.

(b) The term "services not in the course of the employer's trade or business" includes services that do not promote or advance the trade or business of the employer. Services performed for a corporation do not come within the exception.

(c) The test relating to cash remuneration of \$50 or more is based on the remuneration earned during a calendar quarter rather than on the remuneration paid in a calendar quarter. However, for purposes of determining whether the test is met, it is also required that the remuneration be paid, although it is immaterial when the remuneration is paid. Furthermore, in determining whether \$50 or more has been paid for services not in the course of the employer's trade or business, only cash remuneration for such services shall be taken into account. The term "cash remuneration" includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as lodging, food, or other goods or commodities, is disregarded in determining whether the cash-remuneration test is met.

(d) For purposes of this exception, an individual is deemed to be regularly employed by an employer during a calendar quarter only if—

(1) Such individual performs services not in the course of the employer's trade or business for such employer for some portion of the day on at least 24 days (whether or not consecutive) during such calendar quarter; or