

Internal Revenue Service, Treasury

§ 31.3306(c)(10)-1

in excess of \$300 for any month before July 1, 1954, or in excess of \$350 for any month after June 30, 1954, and before the calendar month next following the month [May] in which this Act was amended in 1959, or in excess of \$400 for any month after the month [May] in which this Act was so amended, shall be recognized. A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. Compensation earned in any calendar month before 1947 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or, if the employee establishes, subject to the provisions of section 8, the period during which such compensation will have been earned.

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(r) The term "Board" means the Railroad Retirement Board.

(s) The term "United States", when used in a geographical sense, means the States,

Alaska, Hawaii, and the District of Columbia.

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(Sec. 1, Railroad Unemployment Insurance Act, as amended by secs. 1 and 2, Act of June 20, 1939, 53 Stat. 845; secs. 1 and 3, Act of Aug. 13, 1940, 54 Stat. 785, 786; sec. 15, Act of Apr. 8, 1942, 56 Stat. 210; secs. 1 and 2, Act of July 31, 1946, 60 Stat. 722; sec. 302, Act of Aug. 31, 1954, 68 Stat. 1040; sec. 301, Act of May 19, 1959, Pub. L. 86-28, 73 Stat. 30)

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6658, 28 FR 6638, June 27, 1963]

§ 31.3306(c)(10)-1 Services in the employ of certain organizations exempt from income tax.

(a) *In general.* (1) This section deals with the exception from employment of certain services performed in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521. (See the provisions of §§1.401-1, 1.501(a)-1, and 1.521-1 of this chapter (Income Tax Regulations).) If the services meet the tests set forth in paragraphs (b), (c), (d), or (e) of this section, the services are excepted.

(2) See also §31.3306(c)(8)-1 for provisions relating to the exception of services performed in the employ of religious, charitable, educational, or certain other organizations exempt from income tax; §31.3306(c)(10)-2 for provisions relating to the exception of services performed by certain students in the employ of a school, college, or university; and §31.3306(c)(10)-3 for provisions relating to the exception of services performed before 1962 in the employ of certain employees' beneficiary associations.

(b) *Remuneration less than \$50 for calendar quarter.* Services performed by an employee in a calendar quarter in the employ of an organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521 are excepted from employment, if the remuneration for the service is less than \$50. The test relating to remuneration of \$50 is based on the remuneration earned during a calendar quarter rather than on the remuneration paid in a

calendar quarter. The exception applies separately with respect to each organization for which the employee renders services in a calendar quarter. The type of services performed by the employee and the place where the services are performed are immaterial; the statutory tests are the character of the organization in the employ of which the services are performed and the amount of the remuneration for services performed by the employee in the calendar quarter.

Example 1. X is a local lodge of a fraternal organization and is exempt from income tax under section 501(a) as an organization of the character described in section 501 (c)(8). X has a number of paid employees, among them being A who serves exclusively as recording secretary for the lodge, and B who performs services for the lodge as janitor of its clubhouse. For services performed during the first calendar quarter of 1955 (that is, January 1, 1955, through March 31, 1955, both dates inclusive) A earns a total of \$30. For services performed during the same calendar quarter B earns \$180. Since the remuneration for the services performed by A during such quarter is less than \$50, all of such services are excepted. Thus, A is not counted as an employee in employment on any of the days during such quarter for purposes of determining whether the X organization is an employer (see § 31.3306(a)-1). Even though it is subsequently determined that X is an employer, A's remuneration of \$30 for services performed during the first calendar quarter of such year is not subject to tax. B's services, however, are not excepted during such quarter since the remuneration therefor is not less than \$50. Thus, B is counted as an employee in employment during all of such quarter for purposes of determining whether the X organization is an employer. If it is determined that the X organization is an employer, B's remuneration of \$180 for services performed during the first calendar quarter is included in computing the tax.

Example 2. The facts are the same as in example 1, above, except that on April 1, 1955, A's salary is increased and, for services performed during the calendar quarter beginning on that date (that is, April 1, 1955, through June 30, 1955, both dates inclusive), A earns \$60. Although all of the services performed by A during the first quarter were excepted, none of A's services performed during the second quarter are excepted since the remuneration for such services is not less than \$50. A, therefore, is counted as an employee in employment during all of the second quarter for the purpose of determining whether the X organization is an employer. If it is determined that the X organization is an em-

ployer, A's remuneration of \$60 for services performed during the second calendar quarter is included in computing the tax.

Example 3. The facts are the same as in example 1, above, except that A earns \$120 for services performed during the year 1955, and such amount is paid to him in a lump sum at the end of the year. The services performed by A in any calendar quarter during the year are excepted if the portion of the \$120 attributable to services performed in that quarter is less than \$50. In such case, A is not counted as an employee in employment on any of the days during such quarter for purposes of determining whether the X organization is an employer. If, however, the portion of the \$120 attributable to services performed in any calendar quarter during the year is not less than \$50, the services during that quarter are not excepted. In the latter case, A is counted as an employee in employment during all of such quarter and, if it is determined that the X organization is an employer, that portion of the \$120 attributable to services performed in such quarter is included in computing the tax.

(c) *Collection of dues or premiums for fraternal beneficiary societies, and ritualistic services in connection with such societies, before 1962.* The following services performed by an employee in the employ of a fraternal beneficiary society, order, or association exempt from income tax under section 501(a) are excepted from employment if the services are performed before 1962 or if remuneration for the services is paid before 1962:

(1) Services performed away from the home office of such a society, order, or association in connection with the collection of dues or premiums for such society, order, or association; and

(2) Ritualistic services (wherever performed) in connection with such a society, order, or association.

For purposes of the paragraph the amount of the remuneration for services performed by the employee in the calendar quarter is immaterial; the tests are the character of the organization in whose employ the services are performed, the type of services, and, in the case of collection of dues or premiums, the place where the services are performed.

(d) *Students employed before 1962.* (1) Services performed in the employ of an organization exempt from income tax under section 501(a) (other than an organization described in section 401(a))

or under section 521 by a student who is enrolled and is regularly attending classes at a school, college, or university, are excepted from employment if the services are performed before 1962 or if remuneration for the services is paid before 1962. For purposes of this paragraph, the amount of remuneration for services performed by the employee in the calendar quarter, the type of services, and the place where the services are performed are immaterial; the tests are the character of the organization in whose employ the services are performed and the status of the employee as a student enrolled and regularly attending classes at a school, college, or university.

(2) The term "school, college, or university" as used in this paragraph is to be taken in its commonly or generally accepted sense. For provisions relating to services performed before 1962 by a student enrolled and regularly attending classes at a school, college, or university not exempt from income tax in the employ of such school, college, or university, see paragraph (b) of § 31.3306(c)(10)-2. For provisions relating to services performed after 1961 by a student enrolled and regularly attending classes at a school, college, or university in the employ of such school, college, or university, see paragraph (a) or § 31.3306(c)(10)-2.

(e) *Services performed before 1962 in employ of agricultural or horticultural organization exempt from income tax.* (1) Services performed by an employee in the employ of an agricultural or horticultural organization which is described in section 501(c)(5) and the regulations thereunder and which is exempt from income tax under section 501(a) are excepted from employment if the services are performed before 1962 or if remuneration for the services is paid before 1962.

(2) For purposes of this paragraph, the type of services performed by the employee, the amount of remuneration for the services, and the place where the services are performed are immaterial; the test is the character of the organization in whose employ the services are performed.

[T.D. 6658, 28 FR 6639, June 27, 1963]

§ 31.3306(c)(10)-2 Services of student in employ of school, college, or university.

(a) *Services performed after 1961.* Services performed after 1961 in the employ of a school, college, or university, by a student who is enrolled and is regularly attending classes at the school, college, or university, are excepted from employment (whether or not the school, college, or university is exempt from income tax), if remuneration for the services is paid after 1961.

(b) *Services performed before 1962.* Services performed in the employ of a school, college, or university not exempt from income tax under section 501(a), by a student who is enrolled and is regularly attending classes at the school, college, or university, are excepted from employment if the services are performed before 1962 or if remuneration for the services is paid before 1962.

(c) *General rule.* (1) For purposes of this section, the tests are the character of the organization in the employ of which the services are performed and the status of the employee as a student enrolled and regularly attending classes at the school, college, or university described in paragraph (c)(2) of this section, in the employ of which the employee performs the services. If an employee has the status of a student within the meaning of paragraph (d) of this section, the type of services performed by the employee, the place where the services are performed, and the amount of remuneration for services performed by the employee are not material.

(2) *School, college, or university.* An organization is a *school, college, or university* within the meaning of section 3306(c)(10)(B) if its primary function is the presentation of formal instruction, it normally maintains a regular faculty and curriculum, and it normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on. See section 170(b)(1)(A)(ii) and the regulations thereunder.

(d) *Student Status—general rule.* Whether an employee has the status of a student within the meaning of section 3306(c)(10)(B) performing the services shall be determined based on the relationship of the employee with the