

|->

Title 22@ Social Security

|->

Division 1@ Employment Development Department

|->

Subdivision 1@ Director of Employment Development

|->

Division 2.5@ WITHHOLDING TAX ON WAGES

|->

Chapter 1@ GENERAL PROVISIONS

|->

Section 4309-2@ Exclusions from Wages

4309-2 Exclusions from Wages

(a)

In General. (1) The term "wages" does not include any remuneration for services performed by an employee for his or her employer which is specifically excepted from wages under Section 13009 of the code. (2) The exceptions apply to the remuneration for the type of services performed by an employee and not to the employee as an individual. The exception applies only to the remuneration for those services in the excepted category. EXAMPLE. A is an individual who is employed part time by B to perform domestic service in B's home (see Section 13009(b) of the code). A is also employed by C part time to perform services as a clerk in a department store owned by C. While no withholding is required with respect to A's remuneration for services performed in the employ of B (the remuneration being excluded from wages), the exception does not embrace the remuneration for services performed by A in the employ of C and withholding is required with respect to the wages for such services. (3) Where all wages are not in an excepted category see Section 4331-1 of these regulations. (4) For provisions relating to payments with respect to which a voluntary withholding agreement is in effect, which are not defined as wages in Section 13009 of the code but which are nevertheless deemed to be wages, see Section 4329-1 of these regulations.

(1)

The term "wages" does not include any remuneration for services performed by an

employee for his or her employer which is specifically excepted from wages under Section 13009 of the code.

(2)

The exceptions apply to the remuneration for the type of services performed by an employee and not to the employee as an individual. The exception applies only to the remuneration for those services in the excepted category. EXAMPLE. A is an individual who is employed part time by B to perform domestic service in B's home (see Section 13009(b) of the code). A is also employed by C part time to perform services as a clerk in a department store owned by C. While no withholding is required with respect to A's remuneration for services performed in the employ of B (the remuneration being excluded from wages), the exception does not embrace the remuneration for services performed by A in the employ of C and withholding is required with respect to the wages for such services.

(3)

Where all wages are not in an excepted category see Section 4331-1 of these regulations.

(4)

For provisions relating to payments with respect to which a voluntary withholding agreement is in effect, which are not defined as wages in Section 13009 of the code but which are nevertheless deemed to be wages, see Section 4329-1 of these regulations.

(b)

Fees Paid a Public Official. (1) Authorized fees paid to public officials such as notaries public, clerks of courts, sheriffs, etc., for services rendered in the performance of their official duties are excepted from wages and hence are not subject to withholding. However, salaries paid such officials by the Government, or by a Government agency or instrumentality, are subject to withholding. (2)

Amounts paid to precinct workers for services performed at election booths in state, county, and municipal elections and fees paid to jurors and witnesses are in the nature of fees paid to public officials and therefore are not subject to withholding.

(1)

Authorized fees paid to public officials such as notaries public, clerks of courts, sheriffs, etc., for services rendered in the performance of their official duties are excepted from wages and hence are not subject to withholding. However, salaries paid such officials by the Government, or by a Government agency or instrumentality, are subject to withholding.

(2)

Amounts paid to precinct workers for services performed at election booths in state, county, and municipal elections and fees paid to jurors and witnesses are in the nature of fees paid to public officials and therefore are not subject to withholding.

(c)

Remuneration for Domestic Service. (1) In a private home. (A) Remuneration paid for services of a household nature performed by an employee in or about a private home of the person by whom he or she is employed is excepted from wages and hence is not subject to withholding. A private home is a fixed place of abode of an individual or family. A separate and distinct dwelling unit maintained by an individual is 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 not a private home, and the remuneration paid for services performed therein is not within the exception. (B) In general, services of a household nature in or about a private home include but are not limited to services

performed by cooks, waiters, butlers, housekeepers, governesses, maids, valets, baby sitters, janitors, laundresses, furnacemen, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use. (2) In a Local College Club or Local Chapter of a College Fraternity or Sorority. (A) Remuneration paid for 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 or she is employed is excepted from wages and hence is not subject to withholding. 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 remuneration paid for services performed therein is not within the exception. (B) 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 but are not limited to services rendered by cooks, waiters, butlers, maids, janitors, laundresses, furnacemen, handymen, gardeners, housekeepers, and house-mothers. (3) Remuneration Not Excepted. Remuneration paid for 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, is not within the exceptions. Remuneration paid for services of a household nature is 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.

(1)

In a private home. (A) Remuneration paid for services of a household nature performed by an employee in or about a private home of the person by whom he or she is employed is excepted from wages and hence is not subject to withholding. A private home is a fixed place of abode of an individual or family. A separate and distinct dwelling unit maintained by an individual is 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 not a private home, and the remuneration paid for services performed therein is not within the exception. (B) In general, services of a household nature in or about a private home include but are not limited to services performed by cooks, waiters, butlers, housekeepers, governesses, maids, valets, baby sitters, janitors, laundresses, furnacemen, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use.

(A)

Remuneration paid for services of a household nature performed by an employee in or about a private home of the person by whom he or she is employed is excepted from wages and hence is not subject to withholding. A private home is a fixed place of abode of an individual or family. A separate and distinct dwelling unit maintained by an individual is 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 not a private home, and the remuneration paid for services performed therein is not within the exception.

(B)

In general, services of a household nature in or about a private home include but are not limited to services performed by cooks, waiters, butlers, housekeepers, governesses, maids, valets, baby sitters, janitors, laundresses, furnacemen, caretakers, handymen, gardeners,

footmen, grooms, and chauffeurs of automobiles for family use.

(2)

In a Local College Club or Local Chapter of a College Fraternity or Sorority. (A)

Remuneration paid for 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 or she is employed is excepted from wages and hence is not subject to withholding. 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 remuneration paid for services performed therein is not within the exception. (B) 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 but are not limited to services rendered by cooks, waiters, butlers, maids, janitors, laundresses, furnacemen, handymen, gardeners, housekeepers, and house-mothers.

(A)

Remuneration paid for 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 or she is employed is excepted from wages and hence is not subject to withholding. 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 remuneration paid for services performed therein is not within the exception.

(B)

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 but are not limited to services rendered by cooks, waiters, butlers, maids, janitors, laundresses, furnacemen, handymen, gardeners, housekeepers, and house-mothers.

(3)

Remuneration Not Excepted. Remuneration paid for 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, is not within the exceptions. Remuneration paid for services of a household nature is 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.

(d)

Cash Remuneration for Service Not in the Course of Employer's Trade or Business.(1) Cash remuneration paid for services not in the course of the employer's trade or business performed by an employee for an employer in a calendar quarter is excepted from wages and hence is not subject to withholding unless: (A) The cash remuneration paid for such services performed by the employee for the employer in the calendar quarter is \$50 or more; and (B) Such employee is regularly employed in the calendar quarter by such employer to perform such services. Unless the tests set forth in both subparagraphs (A) and (B) of this subdivision are met, cash remuneration for services not in the course of the employer's trade or business is excluded from wages. (For provisions relating to the exclusion from wages of remuneration paid in any medium other than cash for services not in the course of the employer's trade or business, see subdivision (i) of this regulation.) (2) 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. As used in this section, the term does not include service not in the course of the employer's trade or business performed on a farm operated for profit or domestic service in a private home, local college club, or local chapter of a college fraternity or sorority. Accordingly, this exception does not apply with respect to remuneration which is excepted from wages under Section 13009(a) or 13009(b) of the code. Remuneration paid for service performed for a corporation does not come within the exception. (3) 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 service not in the course of the employer's trade or business, only cash remuneration for such service 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. (4) For purposes of this exception, an individual is deemed to be regularly employed by an employer during a calendar quarter only if: (A) Such individual performs service 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 (B) Such individual was regularly employed (as determined under subparagraph (A) of this paragraph) by such employer in the performance of service not in the course of the employer's trade or business during the preceding calendar quarter. (5) In determining whether an employee has performed service not in the course of the employer's trade or business on at least 24 days during a calendar quarter, there

shall be counted as one day: (A) Any day or portion thereof on which the employee actually performs such service; and (B) Any day or portion thereof on which the employee does not perform service of the prescribed character but with respect to which cash remuneration is paid or payable to the employee for such service, such as a day on which the employee is sick or on vacation. An employee who on a particular day reports for work and, at the direction of his or her employer, holds himself or herself in readiness to perform service not in the course of the employer's trade or business shall be considered to be engaged in the actual performance of such service on that day. For purposes of this exception, a day is a continuous period of 24 hours commencing at midnight and ending at midnight.

(1)

Cash remuneration paid for services not in the course of the employer's trade or business performed by an employee for an employer in a calendar quarter is excepted from wages and hence is not subject to withholding unless: (A) The cash remuneration paid for such services performed by the employee for the employer in the calendar quarter is \$50 or more; and (B) Such employee is regularly employed in the calendar quarter by such employer to perform such services. Unless the tests set forth in both subparagraphs (A) and (B) of this subdivision are met, cash remuneration for services not in the course of the employer's trade or business is excluded from wages. (For provisions relating to the exclusion from wages of remuneration paid in any medium other than cash for services not in the course of the employer's trade or business, see subdivision (i) of this regulation.)

(A)

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

(B)

Such employee is regularly employed in the calendar quarter by such employer to perform such services. Unless the tests set forth in both subparagraphs (A) and (B) of this subdivision are met, cash remuneration for services not in the course of the employer's trade or business is excluded from wages. (For provisions relating to the exclusion from wages of remuneration paid in any medium other than cash for services not in the course of the employer's trade or business, see subdivision (i) of this regulation.)

(2)

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. As used in this section, the term does not include service not in the course of the employer's trade or business performed on a farm operated for profit or domestic service in a private home, local college club, or local chapter of a college fraternity or sorority. Accordingly, this exception does not apply with respect to remuneration which is excepted from wages under Section 13009(a) or 13009(b) of the code. Remuneration paid for service performed for a corporation does not come within the exception.

(3)

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 service not in the course of the employer's trade or business, only cash remuneration for such service 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.

(4)

For purposes of this exception, an individual is deemed to be regularly employed by an employer during a calendar quarter only if: (A) Such individual performs service 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 (B) Such individual was regularly employed (as determined under subparagraph (A) of this paragraph) by such employer in the performance of service not in the course of the employer's trade or business during the preceding calendar quarter.

(A)

Such individual performs service 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

(B)

Such individual was regularly employed (as determined under subparagraph (A) of this paragraph) by such employer in the performance of service not in the course of the employer's trade or business during the preceding calendar quarter.

(5)

In determining whether an employee has performed service not in the course of the employer's trade or business on at least 24 days during a calendar quarter, there shall be counted as one day: (A) Any day or portion thereof on which the employee actually performs such service; and (B) Any day or portion thereof on which the employee does not perform service of the prescribed character but with respect to which cash remuneration is paid or payable to the employee for such service, such as a day on which the employee is sick or on vacation. An employee who on a particular day reports for work and, at the direction of his or her employer, holds himself or herself in readiness to perform service not in the course of the employer's trade or business shall

be considered to be engaged in the actual performance of such service on that day. For purposes of this exception, a day is a continuous period of 24 hours commencing at midnight and ending at midnight.

(A)

Any day or portion thereof on which the employee actually performs such service; and

(B)

Any day or portion thereof on which the employee does not perform service of the prescribed character but with respect to which cash remuneration is paid or payable to the employee for such service, such as a day on which the employee is sick or on vacation. An employee who on a particular day reports for work and, at the direction of his or her employer, holds himself or herself in readiness to perform service not in the course of the employer's trade or business shall be considered to be engaged in the actual performance of such service on that day. For purposes of this exception, a day is a continuous period of 24 hours commencing at midnight and ending at midnight.

(e)

Remuneration for Services for Foreign Government or International Organization.

(1) Services for Foreign Government. (A) Remuneration paid for services performed as an employee of a foreign government is excepted from wages and hence is not subject to withholding. The exception includes not only remuneration paid for services performed by ambassadors, ministers, and other diplomatic officers and employees but also remuneration paid for services performed as a consular or other office or employee of a foreign government or as a nondiplomatic representative of such a government. However, the exception does not include remuneration for services performed for a corporation created or organized in the United States or under the laws of the United States or any state (including the District of Columbia) or of Puerto Rico even though such corporation is wholly

owned by such a government. (B) The citizenship or residence of the employee and the place where the services are performed are immaterial for purposes of the exception. (2) Services for International Organization. (A) Subject to the provisions of Section 1 of the International Organizations Immunities Act, remuneration paid for services performed within or without the United States by an employee for an international organization as defined in Section 7701(a)(18) of the Internal Revenue Code of 1954 is excepted from wages and hence is not subject to withholding. The term "employee" as used in the preceding sentence includes not only an employee who is a citizen or resident of the United States but also an employee who is a nonresident alien individual. The term "employee" also includes an officer. An organization designated by the President through appropriate Executive Order as entitled to enjoy the privileges, exemptions, and immunities provided in the International Organizations Immunities Act may enjoy the benefits of the exclusion from wages with respect to remuneration paid for services performed for such organization prior to the date of the issuance of such Executive Order, if (i) the Executive Order does not provide otherwise and (ii) the organization is a public international organization in which the United States participates, pursuant to a treaty or under the authority of an Act of Congress, authorizing such participation or making an appropriation for such participation, at the time such services are performed.

(1)

Services for Foreign Government. (A) Remuneration paid for services performed as an employee of a foreign government is excepted from wages and hence is not subject to withholding. The exception includes not only remuneration paid for services performed by ambassadors, ministers, and other diplomatic officers and employees but also remuneration paid for services performed as a consular or other office or employee of a

foreign government or as a nondiplomatic representative of such a government.

However, the exception does not include remuneration for services performed for a corporation created or organized in the United States or under the laws of the United States or any state (including the District of Columbia) or of Puerto Rico even though such corporation is wholly owned by such a government. (B) The citizenship or residence of the employee and the place where the services are performed are immaterial for purposes of the exception.

(A)

Remuneration paid for services performed as an employee of a foreign government is excepted from wages and hence is not subject to withholding. The exception includes not only remuneration paid for services performed by ambassadors, ministers, and other diplomatic officers and employees but also remuneration paid for services performed as a consular or other office or employee of a foreign government or as a nondiplomatic representative of such a government. However, the exception does not include remuneration for services performed for a corporation created or organized in the United States or under the laws of the United States or any state (including the District of Columbia) or of Puerto Rico even though such corporation is wholly owned by such a government.

(B)

The citizenship or residence of the employee and the place where the services are performed are immaterial for purposes of the exception.

(2)

Services for International Organization. (A) Subject to the provisions of Section 1 of the International Organizations Immunities Act, remuneration paid for services performed within or without the United States by an employee for an international organization as defined in Section 7701(a)(18) of the Internal Revenue Code of 1954 is excepted from wages and hence is not subject to withholding. The term "employee" as used in the

preceding sentence includes not only an employee who is a citizen or resident of the United States but also an employee who is a nonresident alien individual. The term "employee" also includes an officer. An organization designated by the President through appropriate Executive Order as entitled to enjoy the privileges, exemptions, and immunities provided in the International Organizations Immunities Act may enjoy the benefits of the exclusion from wages with respect to remuneration paid for services performed for such organization prior to the date of the issuance of such Executive Order, if (i) the Executive Order does not provide otherwise and (ii) the organization is a public international organization in which the United States participates, pursuant to a treaty or under the authority of an Act of Congress, authorizing such participation or making an appropriation for such participation, at the time such services are performed.

(A)

Subject to the provisions of Section 1 of the International Organizations Immunities Act, remuneration paid for services performed within or without the United States by an employee for an international organization as defined in Section 7701(a)(18) of the Internal Revenue Code of 1954 is excepted from wages and hence is not subject to withholding. The term "employee" as used in the preceding sentence includes not only an employee who is a citizen or resident of the United States but also an employee who is a nonresident alien individual. The term "employee" also includes an officer. An organization designated by the President through appropriate Executive Order as entitled to enjoy the privileges, exemptions, and immunities provided in the International Organizations Immunities Act may enjoy the benefits of the exclusion from wages with respect to remuneration paid for services performed for such organization prior to the date of the issuance of such Executive Order, if (i) the Executive Order does not provide otherwise and (ii) the organization is a public international organization in which the United States participates, pursuant to a treaty or under the

authority of an Act of Congress, authorizing such participation or making an appropriation for such participation, at the time such services are performed.

(f)

Remuneration for Services of Nonresident Alien Individuals. (1) In General. All remuneration paid for services performed by a non-resident alien individual, if such remuneration otherwise constitutes wages within the meaning of Section 4309-1 of these regulations, is subject to withholding under Section 13020 of the code unless excepted from wages under this section. (2) Remuneration for Services of Residents of Canada or Mexico Who Enter and Leave California at Frequent Intervals. (A) Transportation Service. Remuneration paid to a nonresident alien individual who is a resident of Canada or Mexico and who, in the performance of his or her duties in transportation service between points in California and points in such foreign country, enters and leaves California at frequent intervals, is excepted from wages and hence is not subject to withholding. This exception applies to personnel engaged in railroad, bus, truck, ferry, steamboat, aircraft, or other transportation services and applies whether the employer is a domestic or foreign entity. Thus, the remuneration of a nonresident alien individual who is a resident of Canada and an employee of a domestic railroad, for services as a member of the crew of a train operating between points in Canada and points in California, is not subject to withholding under Section 13020 of the code. (B) Service on International Projects. Remuneration paid to a nonresident alien individual who is a resident of Mexico and who, in the performance of his or her duties in connection with the construction, maintenance, or operation of a waterway, viaduct, dam, or bridge traversed by, or traversing, the boundary between California and Mexico, enters and leaves California at frequent intervals, is excepted from wages and hence is not subject to withholding. (C) Limitation. The

exceptions provided by this paragraph do not apply to the remuneration of a resident of Canada or of Mexico who is employed wholly within California as, for example, where such a resident is employed to perform service at a fixed point or points in California, such as a factory, store, office, or designated area or areas within California, and who commutes from his or her home in Canada or Mexico, in the pursuit of his or her employment within California. (D) Certificate Required. In order for an exception provided by this paragraph to apply for any taxable year, the nonresident alien employee must furnish his or her employer the certificate required by Section 26 CFR 31.3401(a)(6)-1(c)(4) for the exception of such remuneration from the definition of wages for federal income tax purposes.

(1)

In General. All remuneration paid for services performed by a non-resident alien individual, if such remuneration otherwise constitutes wages within the meaning of Section 4309-1 of these regulations, is subject to withholding under Section 13020 of the code unless excepted from wages under this section.

(2)

Remuneration for Services of Residents of Canada or Mexico Who Enter and Leave California at Frequent Intervals. (A) Transportation Service. Remuneration paid to a nonresident alien individual who is a resident of Canada or Mexico and who, in the performance of his or her duties in transportation service between points in California and points in such foreign country, enters and leaves California at frequent intervals, is excepted from wages and hence is not subject to withholding. This exception applies to personnel engaged in railroad, bus, truck, ferry, steamboat, aircraft, or other transportation services and applies whether the employer is a domestic or foreign entity. Thus, the remuneration of a nonresident alien individual who is a resident of Canada and an employee of a domestic railroad, for services as a member of the crew

of a train operating between points in Canada and points in California, is not subject to withholding under Section 13020 of the code. (B) Service on International Projects. Remuneration paid to a nonresident alien individual who is a resident of Mexico and who, in the performance of his or her duties in connection with the construction, maintenance, or operation of a waterway, viaduct, dam, or bridge traversed by, or traversing, the boundary between California and Mexico, enters and leaves California at frequent intervals, is excepted from wages and hence is not subject to withholding. (C) Limitation. The exceptions provided by this paragraph do not apply to the remuneration of a resident of Canada or of Mexico who is employed wholly within California as, for example, where such a resident is employed to perform service at a fixed point or points in California, such as a factory, store, office, or designated area or areas within California, and who commutes from his or her home in Canada or Mexico, in the pursuit of his or her employment within California. (D) Certificate Required. In order for an exception provided by this paragraph to apply for any taxable year, the nonresident alien employee must furnish his or her employer the certificate required by Section 26 CFR 31.3401(a)(6)-1(c)(4) for the exception of such remuneration from the definition of wages for federal income tax purposes.

(A)

Transportation Service. Remuneration paid to a nonresident alien individual who is a resident of Canada or Mexico and who, in the performance of his or her duties in transportation service between points in California and points in such foreign country, enters and leaves California at frequent intervals, is excepted from wages and hence is not subject to withholding. This exception applies to personnel engaged in railroad, bus, truck, ferry, steamboat, aircraft, or other transportation services and applies whether the employer is a domestic or foreign entity. Thus, the remuneration of a nonresident alien individual who is a resident of Canada and an employee of a domestic railroad, for services as a member of the crew of a train

operating between points in Canada and points in California, is not subject to withholding under Section 13020 of the code.

(B)

Service on International Projects. Remuneration paid to a nonresident alien individual who is a resident of Mexico and who, in the performance of his or her duties in connection with the construction, maintenance, or operation of a waterway, viaduct, dam, or bridge traversed by, or traversing, the boundary between California and Mexico, enters and leaves California at frequent intervals, is excepted from wages and hence is not subject to withholding.

(C)

Limitation. The exceptions provided by this paragraph do not apply to the remuneration of a resident of Canada or of Mexico who is employed wholly within California as, for example, where such a resident is employed to perform service at a fixed point or points in California, such as a factory, store, office, or designated area or areas within California, and who commutes from his or her home in Canada or Mexico, in the pursuit of his or her employment within California.

(D)

Certificate Required. In order for an exception provided by this paragraph to apply for any taxable year, the nonresident alien employee must furnish his or her employer the certificate required by Section 26 CFR 31.3401(a)(6)-1(c)(4) for the exception of such remuneration from the definition of wages for federal income tax purposes.

(g)

Remuneration for Services Performed by a Minister of a Church or a Member of a Religious Order. (1) In General. Remuneration paid for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry, or by a member of a religious order in the exercise of duties required by such order, is excepted from wages and hence is not subject to

withholding. (2) Service by a Minister in the Exercise of His or Her Ministry. Except as provided in subparagraph (C) of paragraph (3) of this subdivision, service performed by a minister in the exercise of his or her ministry includes the ministration of sacerdotal functions and the conduct of religious worship, and the control, conduct, and maintenance of religious organizations (including the religious boards, societies, and other integral agencies of such organizations), under the authority of a religious body constituting a church or church denomination. The following rules are applicable in determining whether services performed by a minister are performed in the exercise of his or her ministry: (A) Whether service performed by a minister constitutes the conduct of religious worship or the ministration of sacerdotal functions depends on the tenets and practices of the particular religious body constituting his or her church or church denomination. (B) Service performed by a minister in the control, conduct, and maintenance of a religious organization relates to directing, managing, or promoting the activities of such organization. Any religious organization is deemed to be under the authority of a religious body constituting a church or church denomination if it is organized and dedicated to carrying out the tenets and principles of a faith in accordance with either the requirements or sanctions governing the creating of institutions of the faith. The term "religious organization" has the same meaning and application as is given to the term for federal income tax purposes. (C) (i) If a minister is performing service in the conduct of religious worship or the ministration of sacerdotal functions, such service is in the exercise of his or her ministry whether or not it is performed for a religious organization. (ii) The rule in clause (i) of this subparagraph may be illustrated by the following example: EXAMPLE. M, a duly ordained minister, is engaged to perform services as chaplain at N University. M devotes his or her entire time to performing his or

her duties as chaplain which include the conduct of religious worship, offering spiritual counsel to the university students, and teaching a class in religion. M is performing service in the exercise of his or her ministry. (D) (i) If a minister is performing service for an organization which is operated as an integral agency of a religious organization under the authority of a religious body constituting a church or church denomination all service performed by the minister in the conduct of religious worship, in the ministration of sacerdotal functions, or in the control, conduct, and maintenance of such organization (see subparagraph (B) of this paragraph) is in the exercise of his or her ministry. (ii) The rule in clause (i) of this subparagraph may be illustrated by the following example: EXAMPLE. M, a duly ordained minister, is engaged by the N Religious Board to serve as director of one of its departments. M performs no other service. The N Religious Board is an integral agency of O, a religious organization operating under the authority of a religious body constituting a church denomination. M is performing service in the exercise of his or her ministry. (E) (i) If a minister, pursuant to an assignment or designation by a religious body constituting his or her church, performs service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization, all service performed by the minister even though such service may not involve the conduct of religious worship or the ministration of sacerdotal functions, is in the exercise of his or her ministry. (ii) The rule in clause (i) of this subparagraph may be illustrated by the following example: EXAMPLE. M, a duly ordained minister, is assigned by X, the religious body constituting his or her church, to perform advisory service to Y Company in connection with the publication of a book dealing with the history of M's church denomination. Y is neither a religious organization nor operated as an integral agency of a religious organization. M performs no other service for X or Y. M is

performing service in the exercise of his or her ministry. (3) Service by a Minister Not in the Exercise of His or Her Ministry. (A) Section 13009(f) of the Code does not except from wages remuneration for service performed by a duly ordained, commissioned, or licensed minister of a church which is not in the exercise of his or her ministry. (B) (i) If a minister is performing service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization and the service is not performed pursuant to an assignment or designation by his or her ecclesiastical superiors, then only the service performed by him or her in the conduct of religious worship or the ministration of sacerdotal functions is in the exercise of his or her ministry. See, however, subparagraph (c) of this paragraph. (ii) The rule in clause (i) of this subparagraph may be illustrated by the following example: EXAMPLE. M, a duly ordained minister, is engaged by N University to teach history and mathematics. M performs no other service for N although from time to time M performs marriages and conducts funerals for relatives and friends. N University is neither a religious organization nor operated as an integral agency of a religious organization. M is not performing the service for N pursuant to an assignment or designation by his or her ecclesiastical superiors. The service performed by M for N University is not in the exercise of his or her ministry. However, service performed by M in performing marriages and conducting funerals is in the exercise of his or her ministry. (C) Service performed by a duly ordained, commissioned, or licensed minister of a church as an employee of the United States, or a State, Territory, or possession of the United States, or the District of Columbia, or a foreign government, or a political subdivision of any of the foregoing, is not considered to be in the exercise of his or her ministry for purposes of the collection of income tax at source on wages, even though such service may involve the ministration of sacerdotal functions or the conduct of

religious worship. Thus, for example, service performed by an individual as a chaplain in the Armed Forces of the United States is considered to be performed by a commissioned officer in his or her capacity as such, and not by a minister in the exercise of his or her ministry. Similarly, service performed by an employee of a State as a chaplain in a State prison is considered to be performed by a civil servant of the State and not by a minister in the exercise of his or her ministry. (4) Service in the Exercise of Duties Required by a Religious Order. Service performed by a member of a religious order in the exercise of duties required by such order includes all duties required of the member of the order. The nature or extent of such service is immaterial so long as it is a service which he or she is directed or required to perform by his or her ecclesiastical superiors.

(1)

In General. Remuneration paid for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry, or by a member of a religious order in the exercise of duties required by such order, is excepted from wages and hence is not subject to withholding.

(2)

Service by a Minister in the Exercise of His or Her Ministry. Except as provided in subparagraph (C) of paragraph (3) of this subdivision, service performed by a minister in the exercise of his or her ministry includes the ministration of sacerdotal functions and the conduct of religious worship, and the control, conduct, and maintenance of religious organizations (including the religious boards, societies, and other integral agencies of such organizations), under the authority of a religious body constituting a church or church denomination. The following rules are applicable in determining whether services performed by a minister are performed in the exercise of his or her ministry: (A) Whether service performed by a minister constitutes the conduct of

religious worship or the ministration of sacerdotal functions depends on the tenets and practices of the particular religious body constituting his or her church or church denomination. (B) Service performed by a minister in the control, conduct, and maintenance of a religious organization relates to directing, managing, or promoting the activities of such organization. Any religious organization is deemed to be under the authority of a religious body constituting a church or church denomination if it is organized and dedicated to carrying out the tenets and principles of a faith in accordance with either the requirements or sanctions governing the creating of institutions of the faith. The term "religious organization" has the same meaning and application as is given to the term for federal income tax purposes. (C) (i) If a minister is performing service in the conduct of religious worship or the ministration of sacerdotal functions, such service is in the exercise of his or her ministry whether or not it is performed for a religious organization. (ii) The rule in clause (i) of this subparagraph may be illustrated by the following example: EXAMPLE. M, a duly ordained minister, is engaged to perform services as chaplain at N University. M devotes his or her entire time to performing his or her duties as chaplain which include the conduct of religious worship, offering spiritual counsel to the university students, and teaching a class in religion. M is performing service in the exercise of his or her ministry. (D) (i) If a minister is performing service for an organization which is operated as an integral agency of a religious organization under the authority of a religious body constituting a church or church denomination all service performed by the minister in the conduct of religious worship, in the ministration of sacerdotal functions, or in the control, conduct, and maintenance of such organization (see subparagraph (B) of this paragraph) is in the exercise of his or her ministry. (ii) The rule in clause (i) of this subparagraph may be illustrated by the following example: EXAMPLE. M, a duly ordained minister, is engaged by the N Religious Board to serve as director of one of its

departments. M performs no other service. The N Religious Board is an integral agency of O, a religious organization operating under the authority of a religious body constituting a church denomination. M is performing service in the exercise of his or her ministry. (E) (i) If a minister, pursuant to an assignment or designation by a religious body constituting his or her church, performs service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization, all service performed by the minister even though such service may not involve the conduct of religious worship or the ministration of sacerdotal functions, is in the exercise of his or her ministry. (ii) The rule in clause (i) of this subparagraph may be illustrated by the following example: EXAMPLE. M, a duly ordained minister, is assigned by X, the religious body constituting his or her church, to perform advisory service to Y Company in connection with the publication of a book dealing with the history of M's church denomination. Y is neither a religious organization nor operated as an integral agency of a religious organization. M performs no other service for X or Y. M is performing service in the exercise of his or her ministry.

(A)

Whether service performed by a minister constitutes the conduct of religious worship or the ministration of sacerdotal functions depends on the tenets and practices of the particular religious body constituting his or her church or church denomination.

(B)

Service performed by a minister in the control, conduct, and maintenance of a religious organization relates to directing, managing, or promoting the activities of such organization. Any religious organization is deemed to be under the authority of a religious body constituting a church or church denomination if it is organized and dedicated to carrying out the tenets and principles of a faith in accordance with either the requirements or sanctions governing the creating of institutions of the faith. The term "religious organization" has the

same meaning and application as is given to the term for federal income tax purposes.

(C)

(i) If a minister is performing service in the conduct of religious worship or the ministration of sacerdotal functions, such service is in the exercise of his or her ministry whether or not it is performed for a religious organization. (ii) The rule in clause (i) of this subparagraph may be illustrated by the following example: EXAMPLE. M, a duly ordained minister, is engaged to perform services as chaplain at N University. M devotes his or her entire time to performing his or her duties as chaplain which include the conduct of religious worship, offering spiritual counsel to the university students, and teaching a class in religion. M is performing service in the exercise of his or her ministry.

(i)

If a minister is performing service in the conduct of religious worship or the ministration of sacerdotal functions, such service is in the exercise of his or her ministry whether or not it is performed for a religious organization.

(ii)

The rule in clause (i) of this subparagraph may be illustrated by the following example: EXAMPLE. M, a duly ordained minister, is engaged to perform services as chaplain at N University. M devotes his or her entire time to performing his or her duties as chaplain which include the conduct of religious worship, offering spiritual counsel to the university students, and teaching a class in religion. M is performing service in the exercise of his or her ministry.

(D)

(i) If a minister is performing service for an organization which is operated as an integral agency of a religious organization under the authority of a religious body constituting a church or church denomination all service performed by the minister in the conduct of religious worship, in the ministration of sacerdotal functions, or in the control, conduct, and maintenance of such organization (see subparagraph (B) of this paragraph) is in the exercise

of his or her ministry. (ii) The rule in clause (i) of this subparagraph may be illustrated by the following example: EXAMPLE. M, a duly ordained minister, is engaged by the N Religious Board to serve as director of one of its departments. M performs no other service. The N Religious Board is an integral agency of O, a religious organization operating under the authority of a religious body constituting a church denomination. M is performing service in the exercise of his or her ministry.

(i)

If a minister is performing service for an organization which is operated as an integral agency of a religious organization under the authority of a religious body constituting a church or church denomination all service performed by the minister in the conduct of religious worship, in the ministration of sacerdotal functions, or in the control, conduct, and maintenance of such organization (see subparagraph (B) of this paragraph) is in the exercise of his or her ministry.

(ii)

The rule in clause (i) of this subparagraph may be illustrated by the following example: EXAMPLE. M, a duly ordained minister, is engaged by the N Religious Board to serve as director of one of its departments. M performs no other service. The N Religious Board is an integral agency of O, a religious organization operating under the authority of a religious body constituting a church denomination. M is performing service in the exercise of his or her ministry.

(E)

(i) If a minister, pursuant to an assignment or designation by a religious body constituting his or her church, performs service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization, all service performed by the minister even though such service may not involve the conduct of religious worship or the ministration of sacerdotal functions, is in the exercise of his or her ministry. (ii) The rule in clause (i) of this subparagraph may be illustrated by the following example: EXAMPLE. M, a duly ordained minister, is assigned by X, the religious body constituting his or her church, to

perform advisory service to Y Company in connection with the publication of a book dealing with the history of M's church denomination. Y is neither a religious organization nor operated as an integral agency of a religious organization. M performs no other service for X or Y. M is performing service in the exercise of his or her ministry.

(i)

If a minister, pursuant to an assignment or designation by a religious body constituting his or her church, performs service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization, all service performed by the minister even though such service may not involve the conduct of religious worship or the ministration of sacerdotal functions, is in the exercise of his or her ministry.

(ii)

The rule in clause (i) of this subparagraph may be illustrated by the following example: EXAMPLE. M, a duly ordained minister, is assigned by X, the religious body constituting his or her church, to perform advisory service to Y Company in connection with the publication of a book dealing with the history of M's church denomination. Y is neither a religious organization nor operated as an integral agency of a religious organization. M performs no other service for X or Y. M is performing service in the exercise of his or her ministry.

(3)

Service by a Minister Not in the Exercise of His or Her Ministry.(A) Section 13009(f) of the Code does not except from wages remuneration for service performed by a duly ordained, commissioned, or licensed minister of a church which is not in the exercise of his or her ministry. (B) (i) If a minister is performing service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization and the service is not performed pursuant to an assignment or designation by his or her ecclesiastical superiors, then only the service performed by him or her in the conduct of religious worship or the ministration of sacerdotal functions is in the

exercise of his or her ministry. See, however, subparagraph (c) of this paragraph. (ii)

The rule in clause (i) of this subparagraph may be illustrated by the following example:

EXAMPLE. M, a duly ordained minister, is engaged by N University to teach history and mathematics. M performs no other service for N although from time to time M performs marriages and conducts funerals for relatives and friends. N University is neither a religious organization nor operated as an integral agency of a religious organization. M is not performing the service for N pursuant to an assignment or designation by his or her ecclesiastical superiors. The service performed by M for N University is not in the exercise of his or her ministry. However, service performed by M in performing marriages and conducting funerals is in the exercise of his or her ministry. (C) Service performed by a duly ordained, commissioned, or licensed minister of a church as an employee of the United States, or a State, Territory, or possession of the United States, or the District of Columbia, or a foreign government, or a political subdivision of any of the foregoing, is not considered to be in the exercise of his or her ministry for purposes of the collection of income tax at source on wages, even though such service may involve the ministration of sacerdotal functions or the conduct of religious worship. Thus, for example, service performed by an individual as a chaplain in the Armed Forces of the United States is considered to be performed by a commissioned officer in his or her capacity as such, and not by a minister in the exercise of his or her ministry. Similarly, service performed by an employee of a State as a chaplain in a State prison is considered to be performed by a civil servant of the State and not by a minister in the exercise of his or her ministry.

(A)

Section 13009(f) of the Code does not except from wages remuneration for service performed by a duly ordained, commissioned, or licensed minister of a church which is not in the exercise of his or her ministry.

(B)

(i) If a minister is performing service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization and the service is not performed pursuant to an assignment or designation by his or her ecclesiastical superiors, then only the service performed by him or her in the conduct of religious worship or the ministration of sacerdotal functions is in the exercise of his or her ministry. See, however, subparagraph (c) of this paragraph. (ii) The rule in clause (i) of this subparagraph may be illustrated by the following example: EXAMPLE. M, a duly ordained minister, is engaged by N University to teach history and mathematics. M performs no other service for N although from time to time M performs marriages and conducts funerals for relatives and friends. N University is neither a religious organization nor operated as an integral agency of a religious organization. M is not performing the service for N pursuant to an assignment or designation by his or her ecclesiastical superiors. The service performed by M for N University is not in the exercise of his or her ministry. However, service performed by M in performing marriages and conducting funerals is in the exercise of his or her ministry.

(i)

If a minister is performing service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization and the service is not performed pursuant to an assignment or designation by his or her ecclesiastical superiors, then only the service performed by him or her in the conduct of religious worship or the ministration of sacerdotal functions is in the exercise of his or her ministry. See, however, subparagraph (c) of this paragraph.

(ii)

The rule in clause (i) of this subparagraph may be illustrated by the following example: EXAMPLE. M, a duly ordained minister, is engaged by N University to teach history and mathematics. M performs no other service for N although from time to time M performs marriages and conducts funerals for relatives and friends. N University is neither a religious organization nor operated as an integral

agency of a religious organization. M is not performing the service for N pursuant to an assignment or designation by his or her ecclesiastical superiors. The service performed by M for N University is not in the exercise of his or her ministry. However, service performed by M in performing marriages and conducting funerals is in the exercise of his or her ministry.

(C)

Service performed by a duly ordained, commissioned, or licensed minister of a church as an employee of the United States, or a State, Territory, or possession of the United States, or the District of Columbia, or a foreign government, or a political subdivision of any of the foregoing, is not considered to be in the exercise of his or her ministry for purposes of the collection of income tax at source on wages, even though such service may involve the ministration of sacerdotal functions or the conduct of religious worship. Thus, for example, service performed by an individual as a chaplain in the Armed Forces of the United States is considered to be performed by a commissioned officer in his or her capacity as such, and not by a minister in the exercise of his or her ministry. Similarly, service performed by an employee of a State as a chaplain in a State prison is considered to be performed by a civil servant of the State and not by a minister in the exercise of his or her ministry.

(4)

Service in the Exercise of Duties Required by a Religious Order. Service performed by a member of a religious order in the exercise of duties required by such order includes all duties required of the member of the order. The nature or extent of such service is immaterial so long as it is a service which he or she is directed or required to perform by his or her ecclesiastical superiors.

(h)

Remuneration for Services in Delivery or Distribution of Newspapers, Shopping News, or Magazines. (1) Services of Individuals Under 18. Remuneration for incidental services by an employee of 18 years or under who makes the

house-to-house delivery, such as services in assembling newspapers, is considered to be within the exception. The exception continues only during the time that the employee is under the age of 18. (2) Services of Individuals of Any Age.

Remuneration for services in the sales of newspapers or magazines is excepted without regard to the age of the employee. Remuneration for such services performed other than at the time of sale to the ultimate consumer is not within the exception. Thus, remuneration for services of a regional distributor which are antecedent to but not immediately part of the sale to the ultimate consumer is not within the exception. However, remuneration for incidental services by the employee who makes the sale to the ultimate consumer, such as services in assembling newspapers or in taking newspapers or magazines to the place of sale, is considered to be within the exception.

(1)

Services of Individuals Under 18. Remuneration for incidental services by an employee of 18 years or under who makes the house-to-house delivery, such as services in assembling newspapers, is considered to be within the exception. The exception continues only during the time that the employee is under the age of 18.

(2)

Services of Individuals of Any Age. Remuneration for services in the sales of newspapers or magazines is excepted without regard to the age of the employee. Remuneration for such services performed other than at the time of sale to the ultimate consumer is not within the exception. Thus, remuneration for services of a regional distributor which are antecedent to but not immediately part of the sale to the ultimate consumer is not within the exception. However, remuneration for incidental services by the employee who makes the sale to the ultimate consumer, such as services in assembling newspapers or in taking newspapers or magazines to the place of sale, is considered to

be within the exception.

(i)

Remuneration Other Than in Cash for Service Not in the Course of Employer's Trade or Business. (1) Remuneration paid in any medium other than cash for services not in the course of the employer's trade or business is excepted from wages and hence is not subject to withholding. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any medium other than cash, such as lodging, food, or other goods or commodities, for services not in the course of the employer's trade or business does not constitute wages.

Remuneration paid in any medium other than cash for other types of services does not come within this exception from wages. For provisions relating to cash remuneration for service not in the course of employer's trade or business, see subdivision (d) of this regulation. (2) As used in this section, the term "services not in the course of the employer's trade or business" has the same meaning as when used in subdivision (d) of this regulation.

(1)

Remuneration paid in any medium other than cash for services not in the course of the employer's trade or business is excepted from wages and hence is not subject to withholding. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any medium other than cash, such as lodging, food, or other goods or commodities, for services not in the course of the employer's trade or business does not constitute wages. Remuneration paid in any medium other than cash for other types of services does not come within this exception from wages. For provisions relating to cash remuneration for service not in the course of employer's trade or business, see subdivision (d) of this regulation.

(2)

As used in this section, the term "services not in the course of the employer's trade or business" has the same meaning as when used in subdivision (d) of this regulation.

(j)

Remuneration for Services Performed by Peace Corps Volunteers.(1) Remuneration paid for services performed as a volunteer leader within the meaning of the Peace Corps Act (22 U.S.C. 2501) is excepted from wages, and hence is not subject to withholding, unless the remuneration is paid pursuant to Section 5(c) or Section 6 (l) of the Peace Corps Act.

(1)

Remuneration paid for services performed as a volunteer leader within the meaning of the Peace Corps Act (22 U.S.C. 2501) is excepted from wages, and hence is not subject to withholding, unless the remuneration is paid pursuant to Section 5(c) or Section 6 (l) of the Peace Corps Act.

(k)

Tips. If cash tips received by an employee in a calendar month in the course of his or her employment by an employer amount to \$20 or more, none of the cash tips received by the employee in such calendar month are excepted from wages under this section. The cash tips to which this section applies includes checks and other monetary media of exchange. Tips received by an employee in any medium other than cash, such as passes, tickets, or other goods or commodities do not constitute wages. If an employee in any calendar month performs services for two or more employers and receives tips in the course of his or her employment by each employer, the \$20 test is to be applied separately with respect to the cash tip received by the employee in respect of his or her services for each employer and not to the total cash tips received by the employee during the month.