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Title 22@ Social Security

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Division 1@ Employment Development Department

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Subdivision 1@ Director of Employment Development

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Division 2.5@ WITHHOLDING TAX ON WAGES

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Chapter 2@ WITHHOLDING AND PAYMENT OF TAX

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Section 4331-1@ Included and Excluded Wages

4331-1 Included and Excluded Wages

(a)

If a portion of the remuneration paid by an employer to his or her employee for services performed during a payroll period of not more than 31 consecutive days constitutes wages, and the remainder does not constitute wages, all the remuneration paid the employee for services performed during such period shall for purposes of withholding be treated alike, that is, either all included as wages or all excluded. The time during which the employee performs services, the remuneration for which under Section 13009 of the code constitutes wages, and the time during which he or she performs services, the remuneration for which under such section does not constitute wages, determine whether all the remuneration for services performed during the payroll period shall be deemed to be included or excluded.

(b)

If one-half or more of the employee's time in the employ of a particular employer in a payroll period is spent in performing services the remuneration for which constitutes wages then all the remuneration paid the employee for services performed in that payroll period shall be deemed to be wages.

(c)

If less than one-half of the employee's time in the employ of a particular employer in a payroll period is spent in performing services the remuneration for which

constitutes wages, then none of that remuneration paid the employee for services performed in that payroll period shall be deemed to be wages.

(d)

The application of the provisions of subdivision (a), (b), and (c) of this regulation may be illustrated by the following examples: EXAMPLE (1). Employer B, who operates a store and a farm, employs A to perform services in connection with both operations. The remuneration paid A for services on the farm is excepted as remuneration for agricultural labor, and the remuneration for services performed in the store constitutes wages. Employee A is paid on a monthly basis. During the particular month, A works 120 hours on the farm and 80 hours in the store. None of the remuneration paid by B to A for services performed during the month is deemed to be wages, since the remuneration paid for less than one-half of the services performed during the month constitutes wages. During another month A works 75 hours on the farm and 120 hours in the store. All of the remuneration paid by B to A for services performed during the month is deemed to be wages since the remuneration paid for one-half or more of the services performed during the month constitutes wages. EXAMPLE (2). Employee C is employed as a maid by D, a physician, whose home and office are located in the same building. The remuneration paid C for services in the home is excepted as remuneration for domestic service, and the remuneration paid for C's services in the office constitutes wages. C is paid on a weekly basis. During a particular week C works 20 hours in the home and 20 hours in the office. All of the remuneration paid by D to C for services performed during that week is deemed to be wages, since the remuneration paid for one-half or more of the services performed during the week constitutes wages. During another week C works 22 hours in the home and 15 hours in the office. None of the remuneration paid by D to C for services performed

during that week is deemed to be wages since the remuneration paid for less than one-half of the services performed during the week constitutes wages.

(e)

The rules set forth in this regulation do not apply (1) with respect to any remuneration paid for services performed by an employee for his or her employer if the periods for which remuneration is paid by the employer vary to the extent that there is no period which constitutes a payroll period within the meaning of Section 13008 of the code and Section 4308-1 of these regulations, or (2) with respect to any remuneration paid for services performed by an employee for his or her employer if the payroll period for which remuneration is paid exceeds 31 consecutive days. In any such case withholding is required with respect to that portion of such remuneration which constitutes wages.