

FEDERAL REGISTER

THE NATIONAL ARCHIVES
 OF THE UNITED STATES
 1934

VOLUME 8 NUMBER 177

Washington, Tuesday, September 7, 1943

The President

EXECUTIVE ORDER 9375

AUTHORIZING THE WAR SHIPPING ADMINISTRATOR TO TAKE POSSESSION OF AND OPERATE THE PLANT OF THE ATLANTIC BASIN IRON WORKS, INCORPORATED, AT BROOKLYN, NEW YORK

WHEREAS after investigation I find and proclaim that there is a threatened interruption of the operation of the plant of the Atlantic Basin Iron Works, Incorporated, located at Brooklyn, New York, as a result of a labor disturbance, that the war effort will be unduly impeded or delayed by such interruption, and that the exercise of the following power and authority is necessary to insure the operation of such plant in the interest of the war effort:

NOW, THEREFORE, by virtue of the power and authority vested in me by the Constitution and laws of the United States, particularly the War Labor Disputes Act (Public Law 89, 78th Cong.), as President of the United States and Commander in Chief of the Army and Navy of the United States, it is hereby ordered as follows:

The Administrator of the War Shipping Administration is authorized and directed immediately to take possession of and operate the plant of the Atlantic Basin Iron Works, Incorporated, located at Brooklyn, New York, through and with the aid of such person or persons or instrumentality as he may designate, and insofar as may be necessary or desirable, to produce the war materials called for by the Company's contracts with the United States, its departments and agencies, or as may be otherwise required for the war effort, and do all things necessary or incidental to that end.

Upon request of the War Shipping Administrator, the Secretary of War shall take such action, if any, as he may deem necessary or desirable to provide protection for such plant and all persons employed therein.

The War Shipping Administrator shall employ such employees, including a competent civilian advisor on industrial relations, as are necessary to carry

out the provisions of this order and of the directive order of the War Labor Board dated August 25, 1943; and in furtherance of the purposes of this order, the War Shipping Administrator may exercise any existing contractual or other rights of said Company, or take such steps as may be necessary or desirable.

Possession and operation hereunder of the said plant shall be terminated within sixty days after the President determines that the productive efficiency of the plant prevailing prior to the taking possession thereof has been restored.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
September 3, 1943.

[F. R. Doc. 43-14460; Filed, September 3, 1943;
4:49 p. m.]

Regulations

TITLE 7—AGRICULTURE

Chapter VI—Soil Conservation Service

PART 601—LAND UTILIZATION PROGRAM UNDER THE BANKHEAD-JONES FARM TENANT ACT

DISCHARGE OF FIREARMS NEAR RECREATIONAL AREAS

Amendment to the rules and regulations for the protection of lands acquired under, or transferred for administration under, Title III of the Bankhead-Jones Farm Tenant Act.

Pursuant to the authority vested in the Secretary of Agriculture under section 32 (f), Title III, of the Bankhead-Jones Farm Tenant Act, and in the War Food Administrator by Executive Order No. 9322, as amended by Executive Order No. 9334, paragraph nineteen of the Rules and Regulations for the Protection of Lands Acquired Under, or Transferred for Administration Under, Title III of the Bankhead-Jones Farm Tenant Act is amended to read as follows:

§ 601.21 *Prohibited acts on lands acquired under or transferred to Title III.*
(a) * * *

(Continued on p. 12255)

CONTENTS

THE PRESIDENT

EXECUTIVE ORDER:
Atlantic Basin Iron Works, Inc.,
possession and operation of
plant..... 12253

REGULATIONS AND NOTICES

AGRICULTURAL AGENCIES: See Soil
Conservation Service; War
Food Administration.

ALIEN PROPERTY CUSTODIAN:
Transfers of any right, title or
interest in special accounts,
prohibition (2 documents)..... 12257

Vesting orders:
Aktieselskapet Norsk Alumi-
num Co..... 12362
Bruun, Otto J..... 12361
Fluhrer, Johann Heinrich
and Johann Friedrich..... 12364
Ishimoto, Otohiko and Takeo..... 12366
Lucchesi, Gaspero..... 12364
Nippon Club, Inc..... 12363
Rheinische Metallwaren und
Maschinenfabrik Som-
merda A. G..... 12361
Simonelli, Rosa Pratos..... 12365
Societe Anonyme des Manu-
factures des Glaces..... 12362
Societe Anonyme l'Atomie..... 12361

CIVIL AERONAUTICS BOARD:
Certificates of public conven-
ience and necessity; appli-
cations..... 12257
Forms and applications; reports
of ownership of stock and
other interests by officers
and directors..... 12258
Rules of practice; appearances
by third persons and formal
interventions..... 12258

COAL MINES ADMINISTRATION:
Termination of Government pos-
session and control;
A & A Coal Co., et al..... 12353
Allegheny Pittsburgh Coal Co.,
et al..... 12351
Allegheny River Mining Co.,
et al..... 12353
Alvey Brothers Coal Co., et al..... 12355
Ames Mining Co., et al..... 12351
Atlantic Coal Sales Co., et al..... 12354

(Continued on p. 12254)

the employer's trade or business is excepted.

Example. A's business is that of operating a sawmill. He employs B, a carpenter, at an hourly wage to repair his home. B works irregularly and spends the greater part of two days in completing the work. Since B's labor is casual and is not in the course of A's trade or business, the remuneration paid for such services is excepted.

The remuneration paid for casual labor, that is, labor which is occasional, incidental, or irregular, but which is in the course of the employer's trade or business, does not come within the above exception.

Example (1). C's business is that of operating a sawmill. He employs D for two hours at an hourly wage, to remove sawdust from his mill. D's labor is casual since it is occasional, incidental, or irregular, but it is in the course of C's trade or business and the remuneration paid for such labor is not excepted.

Example (2). E is engaged in the business of operating a department store. He employs additional clerks for short periods. While the services of the clerks may be casual, they are in the course of the employer's trade or business and, therefore, the remuneration paid for such services is not excepted.

Remuneration paid for casual labor performed for a corporation does not come within this exception.

(f) *Compensation paid by foreign government or wholly-owned instrumentality thereof.* Remuneration paid for services performed as an employee of a foreign government, or the government of the Commonwealth of the Philippines, or a wholly-owned instrumentality of any such government is excepted. 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 officer or employee of a foreign government, or as nondiplomatic representative of such a government.

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

(g) *Compensation paid to nonresident alien individuals.* Except in the case of certain nonresident alien individuals who are residents of Canada and Mexico, remuneration for services performed by nonresident alien individuals does not constitute wages subject to withholding under section 1622. For withholding of income tax on wages paid for services performed within the United States in the case of nonresident alien individuals generally, see section 143 and regulations thereunder.

Withholding is required in the case of wages paid to nonresident aliens who are residents of a contiguous country (Canada or Mexico) and who enter and leave the United States at frequent intervals, except such aliens who, in the performance of their duties in transportation service between points in the United States and points in a contiguous country, enter and leave the United States at frequent intervals. This exception

applies to personnel engaged in railroad, ferry, steamboat, and aircraft services and applies alike whether the employer is a domestic or foreign entity. Thus, the wages 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 the United States, shall not be subject to withholding under section 1622. The exemption, however, has no application to a resident of Canada who, for example, is employed at a fixed point in the United States, such as a factory, store, or office, and who commutes from his home in Canada in the pursuit of his employment within the United States; nor does it apply to an alien employee of a railroad corporation who is on duty within the United States, even though he enters and leaves the United States in reaching his place of employment from his home in a contiguous country.

In order for the exemption to apply, the nonresident alien employee must file with his employer a certificate containing the following: The employee's name and address, and a statement that he is not a citizen of the United States, and that he is a resident of the named contiguous country and the approximate period of time during which he has occupied such status. Such certificates shall contain, or be verified by, a written declaration that it is made under the penalties of perjury. Although the form is not prescribed, the certificate must contain all the information required by this paragraph.

(h) *Remuneration for services performed outside the United States.* The remuneration paid by an employer for services performed outside the United States does not constitute wages and hence is not subject to withholding unless the major part of the services performed by the employee for such employer during the calendar year is to be performed within the United States. The term "United States" includes the several States, the Territories of Alaska and Hawaii, and the District of Columbia.

The exception relates only to the remuneration paid for the services performed outside the United States regardless of whether the major part of the services performed for such employer during the calendar year is performed within or without the United States. Thus, if an employee performs services outside the United States for more than six months of the calendar year, the remuneration paid for such services does not constitute wages and hence is not subject to withholding, but the remuneration paid for services performed within the United States for such employer during the remainder of the calendar year constitutes wages and is subject to withholding.

If, however, an employee is absent from the United States on business of his employer for less than six months of the calendar year and performs services for such employer within the United States during the remainder of the calendar year, the entire amount of the

remuneration paid for services performed during the calendar year constitutes wages and is subject to withholding.

However, it is recognized that in the case of an employee performing, outside the United States, services of indefinite duration, it may be impossible for the employer to determine whether the major portion of the employee's services during the calendar year is to be performed within the United States or outside the United States. In such case it may be presumed that such performance will continue throughout the calendar year and the liability of the employer to withhold tax on the compensation paid for such services performed outside the United States shall be determined in the light of such presumption. Thus, if any employee undertakes for his employer the performance of services abroad of indefinite duration, or for a term extending beyond the end of the calendar year, and such employee has not already within the calendar year performed services within the United States for a length of time which would constitute, in any circumstances, the major part of the year's services for such employer, no tax is required to be withheld on the compensation paid for services performed by such employee outside of the United States.

Example (1). A has been regularly employed by B, and is sent abroad under such conditions that it is not possible to know when he will return: (a) If A goes abroad on January 1, no tax is required to be withheld on compensation paid to A for services performed abroad, but on the compensation paid for services performed after his return to the United States tax should be withheld; (b) if A goes abroad on June 29 the same rules are applicable, and therefore no tax is required to be withheld on the compensation for services performed abroad but on compensation for services performed after his return to the United States tax should be withheld; (c) if A goes abroad on August 1, tax should be withheld on the compensation paid A for all services performed during the calendar year since under no circumstances could the major part of the services performed during such year be performed outside the United States.

Example (2). A begins his employment with B on July 1, and on September 1 is sent abroad under the circumstances described in Example (1). No tax is required to be withheld on the compensation paid A for the services performed abroad.

Example (3). A begins his employment with B on July 1, and on November 1 is sent abroad under the circumstances described in Example (1). Tax is required to be withheld on the compensation paid A for the services performed abroad, as well as on compensation paid for services performed within the United States for the reasons set forth in Example (1) (c).

For the purposes of this paragraph, services performed on or in connection with (1) an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States or (2) any vessel as an employee of the United States employed through the War Shipping Administration are not considered as services performed outside the United States. Hence, the remuneration paid

for such services constitutes wages subject to withholding within the meaning of section 1621 (a) and these regulations unless the employee performing such services is a nonresident alien.

The word "vessel" includes every description of water-craft, or other contrivance, used as a means of transportation on water. It does not include any type of aircraft.

The term "American vessel" means any vessel which is documented (that is, registered, enrolled, or licensed) or numbered in conformity with the laws of the United States. It also includes any vessel which is neither documented or numbered under the laws of the United States, nor documented under the laws of any foreign country, if the crew of such vessel is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State (including the District of Columbia or the Territory of Alaska or Hawaii).

(i) *Compensation for services performed as a minister of the gospel.* Compensation for services performed as a minister of the gospel is not subject to withholding under section 1622. The exception is extended to remuneration of ministers of the gospel for services which are ordinarily the duties of a minister of the gospel. The duties of a minister of the gospel include the ministration of sacerdotal functions and 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.

SEC. 2. COLLECTION OF TAX AT SOURCE ON WAGES. (Current Tax Payment Act of 1943.)

(a) *In general.* Chapter 9 of the Internal Revenue Code (relating to employment taxes) is amended by inserting at the end thereof the following new subchapters:

SUBCHAPTER D—COLLECTION OF INCOME TAX AT SOURCE OF WAGES

SEC. 1621. DEFINITIONS.
As used in this subchapter—

(b) *Payroll period.* The term "payroll period" means a period for which a payment of wages is ordinarily made to the employee by his employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semi-monthly, monthly, quarterly, semiannual, or annual payroll period.

§ 404.103 *Payroll period.* The term "payroll period" means the period of service for which a payment of wages is ordinarily made to an employee by his employer. It is immaterial that the wages are not always paid at regular intervals. For example, if an employer ordinarily pays a particular employee for each calendar week at the end of the week, but if for some reason the employee in a given week receives a payment in the middle of the week for the portion of the week already elapsed and receives the remainder at the end of the week, the payroll period is still the

calendar week; or if, instead, that employee is sent on a three-week trip by his employer and receives at the end of the trip a single wage payment for three weeks' services, the payroll period is still the calendar week, and the wage payment shall be treated as though it were three separate weekly wage payments.

For the purpose of section 1622, an employee can have but one payroll period with respect to wages paid by any one employer. Thus, if an employee is paid a regular wage for a weekly payroll period and in addition thereto is paid supplemental wages (for example, bonuses) determined with respect to a different period, the payroll period is the weekly payroll period. For computation of tax on supplemental wage payments see § 404.206.

The term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semi-monthly, monthly, quarterly, semiannual, or annual payroll period.

SEC. 2. COLLECTION OF TAX AT SOURCE ON WAGES. (Current Tax Payment Act of 1943.)

(a) *In general.* Chapter 9 of the Internal Revenue Code (relating to employment taxes) is amended by inserting at the end thereof the following new subchapters:

SUBCHAPTER D—COLLECTION OF INCOME TAX AT SOURCE OF WAGES

SEC. 1621. DEFINITIONS.
As used in this subchapter—

(c) *Employee.* The term "employee" includes an officer, employee, or elected official of the United States, a State, Territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

§ 404.104 *Employee.* The term "employee" includes every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. The term specifically includes officers and employees whether elected or appointed, of the United States, a State, Territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

Generally the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not

necessarily present in every case, are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee.

Generally, physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees.

Whether the relationship of employer and employee exists will in doubtful cases be determined upon an examination of the particular facts of each case.

If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, or independent contractor.

The measurement, method, or designation of compensation is also immaterial, if the relationship of employer and employee in fact exists.

No distinction is made between classes or grades of employees. Thus, superintendents, managers, and other superior employees are employees. An officer of a corporation is an employee of the corporation but a director as such is not. If, however, a director performs services for the corporation other than those required by attendance at and participation in meetings of the board of directors, he may or may not be an employee of the corporation. Whether or not such services are performed as an employee of the corporation must be determined upon the basis of the facts in the particular case.

Although an individual may be an employee under the statute, his services may be of such a nature, or performed under such circumstances, that the remuneration paid for such services does not constitute wages within the meaning of section 1621 (a).

SEC. 2. COLLECTION OF TAX AT SOURCE ON WAGES. (Current Tax Payment Act of 1943.)

(a) *In general.* Chapter 9 of the Internal Revenue Code (relating to employment taxes) is amended by inserting at the end thereof the following new subchapters:

SUBCHAPTER D—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

SEC. 1621. DEFINITIONS.
As used in this subchapter—

(d) *Employer.* The term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that—

(1) If the person for whom the individual performs or performed the services does not have control of the payment of the wages