

AMENDING SECTION 3401 OF THE INTERNAL REVENUE CODE OF 1954

JULY 29, 1955.—Ordered to be printed

Mr. BYRD, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 4394]

The Committee on Finance to whom was referred the bill (H. R. 4394) to amend section 3401 of the Internal Revenue Code of 1954, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

By virtue of this act, the Committee on Finance accepts the report of the Committee on Ways and Means, which is as follows:

PURPOSE OF BILL

This bill amends section 3401 of the Internal Revenue Code of 1954 to provide that there is to be no withholding of United States income tax on remuneration paid for services performed in a possession of the United States by a United States citizen if the employer is required by the law of the possession to withhold income tax on the remuneration.

REASONS FOR BILL

Under present law the wages of a United States citizen employed in Puerto Rico or a possession of the United States may under certain circumstances be reduced by withholding for the income tax of Puerto Rico or the possession as well as for the Federal income tax. This is true even though eventually the foreign tax credit in these cases usually relieves the taxpayer of most or all of the Federal income tax liability. This has presented especially serious problems in the case of Puerto Rico although the problem also exists to a lesser extent in the case of the Virgin Islands and Guam. As a result of this double withholding, potential employees are reluctant to take jobs in Puerto Rico or the possessions. Moreover, the Internal Revenue Code already relieves United States citizens who perform services in a foreign country (for an employer other than the United States) from the withholding of the Federal income tax where withholding of a foreign income tax is provided.

EXPLANATION OF BILL

This bill in section 3401 (a) (8) (A) (ii) provides that an employer (other than the United States Government) need not withhold income tax with respect to services performed in a possession of the United States (which for this purpose

2 AMEND SECTION 3401 OF INTERNAL REVENUE CODE OF 1954

includes Puerto Rico) if the employer is required by the law of the possession to withhold income tax on such remuneration. This is the same treatment as is presently provided in the case of services performed in a foreign country.

A committee amendment makes a technical correction to prevent an unintended change in prior law.

It is not believed that there will be any revenue loss resulting from the enactment of this bill.

Your committee has reported this bill unanimously.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics; existing law in which no change is proposed is shown in roman):

SECTION 3401 (a) OF THE INTERNAL REVENUE CODE OF 1954

SEC. 3401. DEFINITIONS.

(a) **WAGES.**—For purposes of this chapter, the term “wages” means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid—

(1) for active service as a member of the Armed Forces of the United States performed in a month for which such member is entitled to the benefits of section 112[.]; or

(2) for agricultural labor (as defined in section 3121 (g)) [.] ; or

(3) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority [.] ; or

(4) for service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(A) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business [.] ; or

(B) such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter [.] ; or

(5) for services by a citizen or resident of the United States for a foreign government or an international organization [.] ; or

(6) for services performed by a nonresident alien individual, other than—

(A) a resident of a contiguous country who enters and leaves the United States at frequent intervals [.] ; or

(B) a resident of Puerto Rico if such services are performed as an employee of the United States or any agency thereof [.] ; or

(7) for such services, performed by a nonresident alien individual who is a resident of a contiguous country and who enters and leaves the United States at frequent intervals, as may be designated by regulations prescribed by the Secretary or his delegate [.] ; or

(8) (A) for services for an employer (other than the United States or any agency thereof)—

(i) performed by a citizen of the United States if, at the time of the payment of such remuneration, it is reasonable to believe that such remuneration will be excluded from gross income under section 911 [.] ; or

(ii) performed in a foreign country or in a possession of the United States by such a citizen if, at the time of the payment of such remuneration, the employer is required by the law of [any] such foreign country or possession of the United States to withhold income tax upon such remuneration [.] ; or

(B) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within a possession of the United States (other than Puerto Rico), if it is reasonable to believe that at least 80 percent of the remuneration to be paid to the employee by such employer during the calendar year will be for such services[.]; or

(C) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within Puerto Rico, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of Puerto Rico[.]; or

(9) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order[.]; or

(10) (A) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution[.]; or

(B) for services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such [service] services, or is entitled to be credited with the unsold newspapers or magazines turned back[.]; or

(11) for services not in the course of the employer's trade or business, to the extent paid in any medium other than cash[.]; or

(12) to, or on behalf of, an employee or his beneficiary—

(A) from or to a trust described in section 401 (a) which is exempt from tax under section 501 (a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust[.]; or

(B) under or to an annuity plan which, at the time of such payments, meets the requirements of section 401 (a) (3), (4), (5), and (6).

