

Reg. Section 31.3121(b)(3)-1

Family employment.

- (a) Certain services are excepted from employment because of the existence of a family relationship between the employee and the individual employing him. The exceptions are as follows:
- (1) Services performed by an individual in the employ of his or her spouse;
 - (2)
 - (i) Services performed before 1961 by a father or mother in the employ of his or her son or daughter;
 - (ii) Services not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed after 1960 but prior to 1968 by a father or mother in the employ of his or her son or daughter;
 - (iii) Services not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed after 1967 by a father or mother in the employ of his or her son or daughter unless (a) the employer has a child (including an adopted child or stepchild) living in his or her home who is under age 18 or who has a mental or physical condition which requires the personal care and supervision of an adult for at least 4 continuous weeks in the calendar quarter in which the services are rendered; and (b) the employer is during the calendar quarter in which the services are rendered:
 - (1) A widow or widower;
 - (2) A divorced person who has not remarried; or
 - (3) A married person who has a spouse living in the home who has a mental or physical condition which results in such spouse's being incapable of caring for such child for at least 4 continuous weeks in the calendar quarter in which the services are rendered; and
 - (3) Services performed by a son or daughter under the age of 21 in the employ of his or her father or mother.
- (b) Under paragraph (a) (1) and (2) (i) of this section, the exception is conditioned solely upon the family relationship between the employee and the individual employing him. Under paragraph (a)(2) (ii) and (iii) of this section, in addition to the family relationship, there is a further requirement that the services performed after 1960 and before 1968 for purposes of paragraph (a)(2)(ii) and after 1967 for purposes of paragraph (a)(2)(iii) shall be services not in the course of the employer's trade or business or shall be domestic service in a private home of the employer. The terms "services not in the course of the employer's trade or business" and "domestic service in a private home of the employer" have the same meaning as when used in § 31.3121(a) (7)-1, except that it is immaterial under paragraphs (a)(2) (ii) and (iii) of this section whether or not such services are performed on a farm

operated for profit. The mere fact that a mental or physical disability, whether temporary or permanent, renders a child or spouse incapable of self-support does not necessarily mean that the child requires the personal care and supervision of an adult or that the spouse is incapable of caring for a child within the meaning of paragraph (a)(2)(iii) of this section. A written statement by a doctor of the existence of the mental or physical condition of the child or spouse which states that the child requires the personal care and supervision of an adult or that the spouse is incapable of caring for a child and which sets forth the period of time during which the condition has existed and is likely to exist will usually be sufficient evidence to establish the existence and duration of the condition at the time of the statement. Under paragraph (a)(3) of this section, in addition to the family relationship, there is a further requirement that the son or daughter shall be under the age of 21, and the exception continues only during the time that the son or daughter is under the age of 21.

- (c) Services performed in the employ of a partnership are within the exception described in paragraph (a) of this section only if the requisite family relationship exists between the employee and each of the partners comprising the partnership.
-  (d) Services performed in the employ of a corporation are not within the exception described in paragraph (a) of this section, except that services performed in the employ of an entity that is treated as a corporation under § 301.7701-2(c)(2)(iv)(B) of this chapter may qualify for the exception if the requirements of the exception are otherwise met. An entity that is treated as a corporation under § 301.7701-2(c)(2)(iv)(B) of this chapter is not treated as the employer for purposes of applying section 3121(b)(3) and this section. For purposes of applying section 3121(b)(3) and this section, the owner of an entity that is treated as a corporation under § 301.7701-2(c)(2)(iv)(B) of this chapter is treated as the employer.
- (e) Paragraphs (c) and (d) of this section apply to wages paid on or after November 1, 2011. However, taxpayers may apply paragraphs (c) and (d) of this section to wages paid on or after January 1, 2009.