

Reg. Section 31.3306(c)(5)-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) Services performed by a father or mother in the employ of his or her son or daughter; 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) of this section, the exception is conditioned solely upon the family relationship between the employee and the individual employing him. 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 such 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 section 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 section 301.7701-2(c)(2)(iv)(B) of this chapter is not treated as the employer for purposes of applying section 3306(c)(5) and this section. For purposes of applying section 3306(c)(5) and this section, the owner of an entity that is treated as a corporation under section 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.