§ 36.3121(l)(1)–2 Amendment of agreement.

(a) An agreement entered into by a domestic corporation as provided in § 36.3121(l)(1)–1 may be amended so as to be made applicable, in the same manner and under the same conditions, with respect to any one or more of the foreign subsidiaries of the domestic corporation not previously named in the agreement. See § 36.3121(l)(2)–1(b), relating to the effective period of an amendment of an agreement.

(b) Form 2032 Supplement is the form prescribed for use in amending an agreement entered into by a domestic corporation as provided in § 36.3121(l)(1)–1.

(c) A domestic corporation shall signify its desire to amend an agreement entered into by the corporation as provided in § 36.3121(l)(1)–1 by executing and filing Form 2032 Supplement in triplicate.

(d) Form 2032 Supplement shall be executed and filed in the manner and in conformity with the requirements prescribed in the instructions relating to such form and in § 36.3121(l)(1)–1(c) in respect of an agreement on Form 2032. Form 2032 Supplement executed and filed as provided in this paragraph shall be signed and dated by the district director or director of the service center, and, upon such signing, the Form 2032 Supplement so executed and filed will constitute an amendment of the agreement entered into on Form 2032. The Internal Revenue Service will return one copy of the amendment to the domestic corporation, will transmit one copy to the Department of Health, Education, and Welfare, and will retain one copy (together with all related papers).

[T.D. 6145, 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7012, 34 FR 7694, May 15, 1969]

§ 36.3121(l)(1)–3 Effect of agreement.

(a) *Liability for amounts equivalent to tax*—(1) *In general.* A domestic corporation which has entered into an agreement (as provided in § 36.3121(l)(1)–1, or any amendment thereof (as provided in § 36.3121(l)(1)–2, incurs liability under the agreement in respect of certain remuneration paid by each foreign subsidiary named in the agreement, or any amendment thereof. Liability is incurred in respect of the remuneration paid to all those employees of the foreign subsidiaries who are citizens of the United States and who perform services outside the United States (other than services which constitute employment) for the foreign subsidiaries. However, liability is incurred only with respect to that portion of such remuneration paid by the foreign subsidiary which is attributable to services performed during the period for which the agreement is in effect with respect to such subsidiary, and then only to the extent that the remuneration would constitute wages if the services to which the remuneration is attributable were performed in the United States. Liability with respect to such remuneration is incurred in an amount equivalent to the sum of the employee and employer taxes which would be imposed by sections 3101 and 3111, respectively, if such remuneration constituted wages. If an individual performs services for more than one of the foreign subsidiaries named in an agreement, including any amendment thereof, such services are regarded as being performed in the employ of a single employer for purposes of determining the amount of the remuneration for such services which would constitute wages if the services were performed in the United States. See § 36.3121(l)(9)–1, relating to the treatment of a domestic corporation as a separate entity in its capacity as a party to an agreement.

(2) *Examples.* The application of paragraph (a)(1) of this section may be illustrated by the following examples:

Example 1. P. a domestic corporation, has entered into an agreement as provided in § 36.3121(l)(1)–1, effective with respect to services performed on and after January 1, 1955. Three foreign subsidiaries, S–1, S–2, and S–3 are named in the agreement. A, a citizen of the United States, is employed during 1955 by S–1, S–2, and S–3, for the performance outside the United States of services covered by the agreement. In 1955 A is paid remuneration of $2,500 for such services by each of the foreign subsidiaries. The circumstances are such that the entire $7,500 would constitute wages if the services has been performed in the United States. However, only $4,200 of such remuneration would constitute wages if the services had been performed in the United States for a single employer, and

it is with respect to this amount only that P incurs liability under its agreement.

Example 2. On August 1, 1955, P, the domestic corporation in the preceding example, amends its agreement to include therein its foreign subsidiary S–4. The amendment is in effect with respect to S–4 for the period beginning with October 1, 1955. B, a citizen of the United States, is employed by S–4 throughout 1955 for the performance of services outside the United States. B is paid remuneration of $500 in each month of 1955 for these services. The circumstances are such that the first $4,200 of such remuneration would constitute wages if the services had been performed in the United States, and, except for the $4,200 limitation, the remainder of such remuneration would constitute wages if the services had been so performed. P incurs no liability with respect to remuneration paid B for services performed for S–4 prior to October 1, 1955. However, P incurs liability under its agreement with respect to the $1,500 paid B in October, November, and December 1955, for services performed in these months. Since the remuneration paid to B for services performed during the first nine months of 1955 is not covered by the agreement, such remuneration is not taken into account in computing the $4,200 limitation or the liability under the agreement.

Example 3. Assume the same facts as in example 2 except that B's services for S–4 during December 1955 are of a character which if performed within the United States would be excepted from employment. Accordingly, P incurs no liability under the agreement with respect to the $500.00 paid in December 1955 for such services.

(3) *Determination of liability.* The amount of the liability referred to in paragraph (a)(1) of this section incurred by a domestic corporation for any period shall be determined in the same manner as liability for the employee tax and for the employer tax imposed by the Federal Insurance Contributions Act is determined, pursuant to regulations relating to the taxes under such act as in effect for the same period, with respect to wages paid by an employer to an employee.

(b) *Liability for amounts equivalent to interest or penalties.* A domestic corporation which has entered into an agreement as provided in § 36.3121(l)(1)–1 also incurs liability under the agreement for amounts equivalent to the amount of interest, additions to the taxes, additional amounts, and penalties which would be applicable if the remuneration for services covered by the agreement constituted wages.

(c) *Deductions from employees' remuneration.* There is no obligation to deduct, or cause to be deducted, from the remuneration of any employee of a foreign subsidiary any part of the amount due from a domestic corporation under its agreement. Whether such deduction shall be made is a matter for settlement between the employee and the domestic corporation or such other person as may be concerned.

(d) *Cross reference.* For other obligations of a domestic corporation under an agreement, see § 36.3121(l)(1)–1.

[T.D. 6145, 20 FR 6577, Sept. 8, 1955, as amended by T.D. 6390, 24 FR 4831, June 13, 1959]

§ 36.3121(l)(2)–1 Effective period of agreement.

(a) *In general.* An agreement entered into as provided in § 36.3121(l) (1)–1 shall be in effect for the period beginning with the first day of the calendar quarter in which the agreement is signed by the district director or director of the service center, or the first day of the calendar quarter following the calendar quarter in which the agreement is signed by the district director or director of the service center, whichever is specified in the agreement. In no case, however, shall the agreement be effective for any calendar quarter which begins prior to January 1, 1955.

(b) *Amendment of agreement.* If an amendment on Form 2032 Supplement (filed by a domestic corporation to include in its agreement services performed for a foreign subsidiary not previously named therein) is signed by the district director or director of the service center, within the quarter for which the agreement is first effective or within the first calendar month following such quarter, the agreement shall be effective with respect to the subsidiary named in the amendment as of the date such agreement first became effective. However, if the amendment is signed by the district director or director of the service center after the last day of the fourth month for which the agreement is in effect, such agreement shall be in effect with respect to the subsidiary named in the amendment for the period beginning with the first day of the calendar quarter following the