eign trust, but only to the extent such tax is imposed on the portion of such distribution which is included in the gross income of such citizen or resident.

(iii) Election to be treated as domestic trust

Solely for purposes of this section, a foreign trust may elect to be treated as a domestic trust. Such an election may be revoked with the consent of the Secretary.

(f) Covered expatriate

For purposes of this section, the term ''covered expatriate'' has the meaning given to such term by section 877A(g)(1).

(Added Pub. L. 110–245, title III, § 301(b)(1), June 17, 2008, 122 Stat. 1644.)

EFFECTIVE DATE

Pub. L. 110–245, title III, § 301(g), June 17, 2008, 122 Stat. 1647, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this chapter and section 877A of this title and amending sections 877, 6039G, and 7701 of this title] shall apply to any individual whose expatriation date (as so defined) is on or after the date of the enactment of this Act [June 17, 2008].

''(2) GIFTS AND BEQUESTS.—Chapter 15 of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to covered gifts and bequests (as defined in section 2801 of such Code, as so added) received on or after the date of the enactment of this Act from transferors (or from the estates of transferors) whose expatriation date is on or after such date of enactment.''

Subtitle C—Employment Taxes

Chapter		Sec.[1]
21.	Federal insurance contributions act	3101
22.	Railroad retirement tax act	3201
23.	Federal unemployment tax act	3301
23A.	Railroad Unemployment Repayment Tax	3321
24.	Collection of income tax at source on wages	3401
25.	General provisions relating to employment taxes	3501

AMENDMENTS

1983—Pub. L. 98–76, title II, § 231(c), Aug. 12, 1983, 97 Stat. 429, added item for chapter 23A.

Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Pub. L. 97–248, title III, §§ 307(b)(1), (6), 308(a), Sept. 3, 1982, 96 Stat. 590, 591, provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, the heading of subtitle C is amended to read ''Employment Taxes and Collection of Income Tax at Source'', the caption of chapter 24 is amended by striking out ''On Wages'', and the caption of chapter 25 is amended by inserting ''And Collection Of Income Taxes At Source'' after ''Employment Taxes''. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§ 301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

[1] Section numbers editorially supplied.

CHAPTER 21—FEDERAL INSURANCE CONTRIBUTIONS ACT

Subchapter		Sec.[1]
A.	Tax on employees	3101
B.	Tax on employers	3111
C.	General provisions	3121

Subchapter A—Tax on Employees

Sec.
3101. Rate of tax.
3102. Deduction of tax from wages.

§ 3101. Rate of tax

(a) Old-age, survivors, and disability insurance

In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

In cases of wages received during:	The rate shall be:
1984, 1985, 1986, or 1987	5.7 percent
1988 or 1989	6.06 percent
1990 or thereafter	6.2 percent.

(b) Hospital insurance

In addition to the tax imposed by the preceding subsection, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages received during the calendar years 1974 through 1977, the rate shall be 0.90 percent;

(2) with respect to wages received during the calendar year 1978, the rate shall be 1.00 percent;

(3) with respect to wages received during the calendar years 1979 and 1980, the rate shall be 1.05 percent;

(4) with respect to wages received during the calendar years 1981 through 1984, the rate shall be 1.30 percent;

(5) with respect to wages received during the calendar year 1985, the rate shall be 1.35 percent; and

(6) with respect to wages received after December 31, 1985, the rate shall be 1.45 percent.

(c) Relief from taxes in cases covered by certain international agreements

During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, wages received by or paid to an individual shall be exempt from the taxes imposed by this section to the extent that such wages are subject under such agreement exclusively to the laws applicable to the social security system of such foreign country.

(Aug. 16, 1954, ch. 736, 68A Stat. 415; Sept. 1, 1954, ch. 1206, title II, § 208(b), 68 Stat. 1094; Aug. 1, 1956, ch. 836, title II, § 202(b), 70 Stat. 845; Pub. L. 85–840, title IV, § 401(b), Aug. 28, 1958, 72 Stat. 1041; Pub. L. 87–64, title II, § 201(b), June 30, 1961, 75 Stat. 141; Pub. L. 89–97, title I, § 111(c)(5), title

[1] Section numbers editorially supplied.

III, § 321(b), July 30, 1965, 79 Stat. 342, 395; Pub. L. 90–248, title I, § 109(a)(2), (b)(2), Jan. 2, 1968, 81 Stat. 836; Pub. L. 92–5, title II, § 204(a)(1), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92–336, § 204(a)(2), (b)(2), July 1, 1972, 86 Stat. 421, 422; Pub. L. 92–603, § 135(a)(2), (b)(2), Oct. 30, 1972, 86 Stat. 1362, 1363; Pub. L. 93–233, § 6(a)(1), (b)(2), Dec. 31, 1973, 87 Stat. 954, 955; Pub. L. 94–455, title XIX, § 1903(a)(1), Oct. 4, 1976, 90 Stat. 1806; Pub. L. 95–216, title I, § 101(a)(1), (b)(1), title III, § 317(b)(2), Dec. 20, 1977, 91 Stat. 1510, 1511, 1540; Pub. L. 98–21, title I, § 123(a)(1), Apr. 20, 1983, 97 Stat. 87; Pub. L. 108–203, title IV, § 415, Mar. 2, 2004, 118 Stat. 530; Pub. L. 111–148, title IX, § 9015(a)(1), title X, § 10906(a), Mar. 23, 2010, 124 Stat. 870, 1020; Pub. L. 111–152, title I, § 1402(b)(1)(A), Mar. 30, 2010, 124 Stat. 1063.)

AMENDMENT OF SUBSECTION (b)

Pub. L. 111–152, title I, § 1402(b)(1)(A), (3), Mar. 30, 2010, 124 Stat. 1063, provided that, applicable with respect to remuneration received, and taxable years beginning after, Dec. 31, 2012, subsection (b)(2) of this section, as added and amended by sections 9015 and 10906 of Pub. L. 111–148, is amended by striking ''and'' at the end of subparagraph (A), redesignating subparagraph (B) as (C), and adding after subparagraph (A) the following new subparagraph: ''(B) in the case of a married taxpayer (as defined in section 7703) filing a separate return, ½ of the dollar amount determined under subparagraph (A), and''.

Pub. L. 111–148, title X, § 10906(a), (c), Mar. 23, 2010, 124 Stat. 1020, provided that, applicable with respect to remuneration received, and taxable years beginning, after Dec. 31, 2012, subsection (b)(2) of this section, as added by section 9015(a)(1) of Pub. L. 111–148, is amended by striking ''0.5 percent'' and inserting ''0.9 percent''.

Pub. L. 111–148, title IX, § 9015(a)(1), (c), Mar. 23, 2010, 124 Stat. 870, 872, provided that, applicable with respect to remuneration received, and taxable years beginning, after Dec. 31, 2012, subsection (b) of this section is amended (1) by inserting ''(1) In general'' before ''In addition''; (2) by striking ''the following percentages of the'' and inserting ''1.45 percent of the''; (3) by striking ''(as defined in section 3121(b))—'' and all that follows and inserting ''(as defined in section 3121(b)).''; and (4) by adding at the end a new paragraph (2), to read as follows:

(2) Additional tax

In addition to the tax imposed by paragraph (1) and the preceding subsection, there is hereby imposed on every taxpayer (other than a corporation, estate, or trust) a tax equal to 0.5 percent of wages which are received with respect to employment (as defined in section 3121(b)) during any taxable year beginning after December 31, 2012, and which are in excess of—

(A) in the case of a joint return, $250,000, and

(B) in any other case, $200,000.

REFERENCES IN TEXT

Section 233 of the Social Security Act, referred to in subsec. (c), is classified to section 433 of Title 42, The Public Health and Welfare.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–203 substituted ''exclusively to the laws applicable to'' for ''to taxes or contributions for similar purposes under''.

1983—Subsec. (a). Pub. L. 98–21 substituted table of rates for former pars. (1) to (7) which had imposed a tax on the income of every individual (1) with respect to wages received during the calendar years 1974 through 1977 at the rate of 4.95 percent; (2) with respect to wages received during the calendar year 1978 at the rate of 5.05 percent; (3) with respect to wages received during the calendar years 1979 and 1980 at the rate of 5.08 percent; (4) with respect to wages received during the calendar year 1981 at the rate of 5.35 percent; (5) with respect to wages received during the calendar years 1982 through 1984 at the rate of 5.40 percent; (6) with respect to wages received during the calendar years 1985 through 1989 at the rate of 5.70 percent; and (7) with respect to wages received after Dec. 31, 1989, at the rate of 6.20 percent.

1977—Subsec. (a). Pub. L. 95–216, § 101(a)(1), substituted ''1974 through 1977'' for ''1974 through 2010'' in par. (1), substituted ''wages received during the calendar year 1978, the rate shall be 5.05 percent'' for ''wages received after December 31, 2010, the rate shall be 5.95 percent'' in par. (2), and added pars. (3) to (7).

Subsec. (b). Pub. L. 95–216, § 101(b)(1), substituted ''wages received during the calendar year 1978, the rate shall be 1.00 percent'' for ''wages received during the calendar years 1978 through 1980, the rate shall be 1.10 percent'' in par. (2), substituted ''wages received during the calendar years 1979 and 1980, the rate shall be 1.05 percent'' for ''wages received during the calendar years 1981 through 1985, the rate shall be 1.35 percent'', in par. (3), substituted ''wages received during the calendar years 1981 through 1984, the rate shall be 1.30 percent'' for ''wages received after December 31, 1985, the rate shall be 1.50 percent'' in par. (4), and added pars. (5) and (6).

Subsec. (c). Pub. L. 95–216, § 317(b)(2), added subsec. (c).

1976—Subsec. (a). Pub. L. 94–455, § 1903(a)(1)(A), redesignated pars. (5) and (6) as (1) and (2), respectively. Former pars. (1) to (4), which related to a tax rate of 3.8 percent with respect to wages received during the calendar year 1968, a tax rate of 4.2 percent with respect to wages received during the calendar years 1969 and 1970, a tax rate of 4.6 percent with respect to wages received during the calendar years 1971 and 1972, and a tax rate of 4.85 percent with respect to wages received during the calendar year 1973, respectively, were struck out.

Subsec. (b). Pub. L. 94–455, § 1903(a)(1)(B), redesignated pars. (3) to (6) as (1) to (4), respectively. Former pars. (1) and (2), which related to a tax rate of .60 percent with respect to wages received during the calendar years 1968, 1969, 1970, 1971, and 1972 and a tax rate of 1.0 percent with respect to wages received during the calendar year 1973, respectively, were struck out.

1973—Subsec. (a)(4). Pub. L. 93–233, § 6(a)(1), struck out provision for application of 4.85 percent rate of tax during calendar years 1974, 1975, 1976, and 1977.

Subsec. (a)(5). Pub. L. 93–233, § 6(a)(1), increased rate of tax from 4.80 percent to 4.95 percent and substituted calendar year ''1974'' for ''1978'' as the initial year for application of such rate.

Subsec. (a)(6). Pub. L. 93–233, § 6(a)(1), increased rate of tax from 5.85 percent to 5.95 percent.

Subsec. (b)(2). Pub. L. 93–233, § 6(b)(2), struck out provision for application of 1.0 percent rate of tax during calendar years 1974, 1975, 1976, and 1977.

Subsec. (b)(3). Pub. L. 93–233, § 6(b)(2), incorporated former provision of par. (2) for taxation of wages received during calendar years 1974, 1975, 1976, and 1977, decreased the applicable rate of tax from 1.0 percent to 0.90 percent, and struck out provision for 1.25 percent rate of tax for calendar years 1978, 1979, 1980.

Subsec. (b)(4). Pub. L. 93–233, § 6(b)(2), incorporated former provision of par. (3) for taxation of wages re-

ceived during calendar years 1978, 1979, and 1980, decreased the applicable rate of tax from 1.25 percent to 1.10 percent, and struck out provision for 1.35 percent rate of tax for calendar years 1981, 1982, 1983, 1984, and 1985.

Subsec. (b)(5). Pub. L. 93–233, §6(b)(2), incorporated former provision of par. (4) for taxation of wages received during calendar years 1981 through 1985 at applicable 1.35 percent rate of tax and struck out provision for 1.45 percent rate of tax for wages received after Dec. 31, 1985.

Subsec. (b)(6). Pub. L. 93–233, §6(b)(2), incorporated former provision of par. (5) for taxation of wages received after Dec. 31, 1985 and increased the applicable rate of tax from 1.45 to 1.50 percent.

1972—Subsec. (a)(3). Pub. L. 92–603, §135(a)(2)(A), substituted ''the calendar years 1971 and 1972'' for ''any of the calendar years 1971 through 1977''.

Subsec. (a)(3) to (5). Pub. L. 92–336, §204(a)(2), substituted ''any of the calendar years 1971 through 1977'' for ''the calendar years 1971 and 1972'' in par. (3), ''any of the calendar years 1978 through 2010'' for ''the calendar years 1973, 1974, and 1975'' and ''4.5'' for ''5.0'' in par. (4), and ''December 31, 2010'' for ''December 31, 1975'' and ''5.35'' for ''5.15'' in par. (5).

Subsec. (a)(4). Pub. L. 92–603, §135(a)(2)(B), substituted ''wages received during the calendar years 1973, 1974, 1975, 1976, and 1977, the rate shall be 4.85 percent;'' for ''wages paid during any of the calendar years 1978 through 2010, the rate shall be 4.5 per cent; and''.

Subsec. (a)(5). Pub. L. 92–603, §135(a)(2)(B), substituted ''wages received during the calendar years 1978 through 2010, the rate shall be 4.80 percent; and'' for ''wages paid after December 31, 2010, the rate shall be 5.35 percent''.

Subsec. (a)(6). Pub. L. 92–603, §135(a)(2)(B), added par. (6).

Subsec. (b)(2). Pub. L. 92–603, §135(b)(2), increased rate of tax from 0.9 percent to 1.0 percent.

Subsec. (b)(2) to (5). Pub. L. 92–336, §204(b)(2), inserted references to 1976 and 1977 and substituted ''0.9'' for ''0.65'' in par. (2), substituted references for the calendar years 1978 through 1985 for references to the calendar years 1976 through 1979 and substituted ''1.0'' for ''0.70'' in par. (3), substituted references for the calendar years 1986 through 1992 for references to the calendar years 1980 through 1986 and substituted ''1.1'' for ''0.80'' in par. (4), and substituted ''1992'' for ''1986'' and ''1.2'' for ''0.90'' in par. (5).

Subsec. (b)(3). Pub. L. 92–603, §135(b)(2), substituted ''and 1980, the rate shall be 1.25 percent'' for ''1980, 1981, 1982, 1983, 1984, and 1985, the rate shall be 1.0 percent''.

Subsec. (b)(4). Pub. L. 92–603, §135(b)(2), substituted ''1981, 1982, 1983, 1984, and 1985, the rate shall be 1.35 percent; and'' for ''1986, 1987, 1988, 1990, 1991, and 1992, the rate shall be 1.1 percent; and''.

Subsec. (b)(5). Pub. L. 92–603, §135(b)(2), substituted ''December 31, 1985, the rate shall be 1.45 percent'' for ''December 31, 1992, the rate shall be 1.2 percent''.

1971—Subsec. (a)(4). Pub. L. 92–5 substituted ''with respect to wages received during the calendar years 1973, 1974, and 1975, the rate shall be 5.0 percent; and'' for ''with respect to wages received after December 31, 1972, the rate shall be 5.0 percent''.

Subsec. (a)(5). Pub. L. 92–5 added par. (5).

1968—Subsec. (a)(1) to (4). Pub. L. 90–248, §109(a)(2), substituted ''1968'' and ''3.8'' for ''1966'' and ''3.85'' in par. (1) and ''1969 and 1970'' and ''4.2'' for ''1967 and 1968'' and ''3.9'' in par. (2), struck out reference to calendar years 1969 and 1970 from par. (3) and substituted ''4.6'' and ''4.4'', and substituted ''5.0'' for ''4.85'' in par. (4).

Subsec. (b)(1) to (5). Pub. L. 90–248, §109(b)(2), struck out par. (1) provision for employee rate of 0.35 percent of wages received with respect to employment during calendar year 1966, redesignated pars. (2) to (6) as (1) to (5), struck out reference to ''1967'' in such par. (1) and increased the rate by 0.10 percent to 0.60, 0.65, 0.70, 0.80, and 0.90 in pars. (1) to (5), respectively.

1965—Pub. L. 89–97, §321(b), divided the total tax imposed under the entire section upon income through a tax equal to percentages of wages into two separate taxes by dividing the section into subsecs. (a) and (b), with subsec. (a) reflecting the tax for old-age, survivors, and disability insurance and subsec. (b) reflecting the tax for hospital insurance, but, in the case of subsec. (b), without regard to the provisions of section 3121(b)(9) insofar as it relates to employees; increased from 4⅛ percent to 4.20 percent the rate of total tax imposed by the entire section upon wages received during calendar year 1966 (resulting from a tax of 3.85 percent under subsec. (a) and 0.35 percent under subsec. (b)), increased from 4⅛ percent to 4.40 percent the rate of total tax imposed by the entire section upon wages received during calendar year 1967 (resulting from a tax of 3.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), reduced from 4⅝ percent to 4.40 percent the rate of total tax imposed by the entire section upon wages received during calendar year 1968, (resulting from a tax of 3.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), increased from 4⅝ percent to 4.90 percent the rate for calendar years 1969, 1970, 1971, and 1972 (resulting from a tax of 4.4 percent under subsec. (a) and 0.50 percent under subsec. (b)), increased from 4⅝ percent to 5.40 percent the rate for calendar years 1973, 1974, and 1975, (resulting from a tax of 4.85 percent under subsec. (a) and 0.55 percent under subsec. (b)), increased from 4⅝ percent to 5.45 percent the rate for calendar years 1976, 1977, 1978, and 1979 (resulting from a tax of 4.85 percent under subsec. (a) and 0.60 percent under subsec. (b)), increased from 4⅝ percent to 5.55 percent the rate for calendar years 1980 through 1986 (resulting from a tax of 4.85 percent under subsec. (a) and 0.70 percent under subsec. (b)), and increased the rate for calendar years after Dec. 31, 1986, to 5.65 percent (resulting from a tax of 4.85 percent under subsec. (a) and 0.80 percent under subsec. (b)).

Subsec. (b). Pub. L. 89–97, §111(c)(5), struck out '', but without regard to the provisions of paragraph (9) thereof insofar as it relates to employees'' after ''as defined in section 3121(b)''.

1961—Pub. L. 87–64 increased rate of tax for calendar year 1962 from 3 to 3⅛ percent, calendar years 1963 to 1965, inclusive, from 3½ to 3⅝ percent, calendar years 1966 and 1967 from 4 to 4⅛ percent, calendar year 1968 from 4 to 4⅝ percent, and for calendar years after December 31, 1968, from 4½ to 4⅝ percent.

1958—Pub. L. 85–840 increased rate of tax by substituting provisions imposing a tax of 2½% for calendar year 1959, 3% for calendar years 1960 to 1962, 3½% for calendar years 1963 to 1965, 4% for calendar years 1966 to 1968, and 4½% for calendar years beginning after Dec. 31, 1968, for provisions which imposed a tax of 2¼% for calendar years 1957 to 1959, 2¾% for calendar years 1960 to 1964, 3¼% for calendar years 1965 to 1969, 3¾% for calendar years 1970 to 1974, and 4¼% for calendar years beginning after Dec. 31, 1974.

1956—Act Aug. 1, 1956, increased rate of tax with respect to wages received during calendar years 1957 to 1959, and for all calendar years thereafter, by one-quarter percent.

1954—Act Sept. 1, 1954, increased the 3¼ percent rate of tax for the calendar year 1970 and subsequent years to 3½ percent for calendar years 1970 to 1974 and 4 percent for 1975 and subsequent years.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–152 applicable with respect to remuneration received, and taxable years beginning after, Dec. 31, 2012, see section 1402(b)(3) of Pub. L. 111–152, set out as a note under section 1401 of this title.

Amendment by section 9015(a)(1) of Pub. L. 111–148 applicable with respect to remuneration received, and taxable years beginning, after Dec. 31, 2012, see section 9015(c) of Pub. L. 111–148, set out as a note under section 164 of this title.

Amendment by section 10906(a) of Pub. L. 111–148 applicable with respect to remuneration received, and taxable years beginning, after Dec. 31, 2012, see section 10906(c) of Pub. L. 111–148, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 123(a)(3) of Pub. L. 98–21 provided that: ''The amendments made by this subsection [amending this section and section 3111 of this title] shall apply to remuneration paid after December 31, 1983.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 applicable with respect to remuneration paid or received, and taxable years beginning, after 1977, see section 104 of Pub. L. 95–216, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1903(d) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [see Tables for classification of section 1903 of Pub. L. 94–455] shall apply with respect to wages paid after December 31, 1976, except that the amendments made to chapter 22 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 3201 et seq. of this title] shall apply with respect to compensation paid for services rendered after December 31, 1976.''

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after December 31, 1973, see section 6(c) of Pub. L. 93–233, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by Pub. L. 92–603 applicable only with respect to remuneration paid after Dec. 31, 1972, see section 135(c) of Pub. L. 92–603, set out as a note under section 1401 of this title.

Amendment by Pub. L. 92–336 applicable only with respect to remuneration paid after December 31, 1972, see section 204(c) of Pub. L. 92–336, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 204(b) of Pub. L. 92–5 provided that: ''The amendments made by subsection (a)(1) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1971. The remaining amendments made by this section [amending section 3111 of this title] shall apply only with respect to remuneration paid after December 31, 1971.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 applicable only with respect to remuneration paid after Dec. 31, 1967, see section 109(c) of Pub. L. 90–248, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 111(c)(5) of Pub. L. 89–97 applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act (section 3201 et seq. of this title) provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act (section 3101 et seq. of this title) provides may be counted for such calendar year, see section 111(e) of Pub. L. 89–97, set out as an Effective Date note under section 1395i–1 of Title 42, The Public Health and Welfare.

Amendment by section 321(b) of Pub. L. 89–97 applicable with respect to remuneration paid after December 31, 1965, see section 321(d) of Pub. L. 89–97, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–64 applicable with respect to remuneration paid after Dec. 31, 1961, see section 201(d) of Pub. L. 87–64, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–840 applicable with respect to remuneration paid after Dec. 31, 1958, see section 401(d) of Pub. L. 85–840, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, applicable with respect to remuneration paid after Dec. 31, 1956, see section 202(d) of such act Aug. 1, 1956, set out as a note under section 1401 of this title.

TEMPORARY EMPLOYEE PAYROLL TAX CUT

Notwithstanding any other provision of law, with respect to remuneration received during calendar year 2011, the rate of tax under 26 U.S.C. 3101(a) to be 4.2 percent, see section 601 of Pub. L. 111–312, set out as a note under section 1401 of this title.

PENALTIES AND INTEREST NOT ASSESSED FOR FAILURE TO MAKE TIMELY PAYMENT DURING PERIOD JANUARY 1, 1982, TO JUNE 30, 1982, OF TAXES ATTRIBUTABLE TO AMENDMENTS BY PUB. L. 97–123

Pub. L. 97–123, § 3(f), Dec. 29, 1981, 95 Stat. 1663; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Notwithstanding any other provision of law, no penalties or interest shall be assessed on account of any failure to make timely payment of taxes, imposed by sections 3101, 3111, 3201(b), 3211, or 3221(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to payments made for the period beginning January 1, 1982, and ending June 30, 1982, to the extent that such taxes are attributable to this section (or the amendments made by this section) [amending sections 3121 and 3231 of this title and section 409 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under section 3121 of this title] and that such failure is due to reasonable cause and not to willful neglect.''

REFERENCES TO SOCIAL SECURITY ACT

Section 402 of act Sept. 1, 1954, as amended by act Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095, provided that: ''References in the Internal Revenue Code of 1939 [former Title 26, Internal Revenue Code], the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the Railroad Retirement Act of 1937, as amended [section 231 et seq. of Title 45, Railroads], or any other law of the United States to any section or subdivision of a section of the Social Security Act [section 301 et seq. of Title 42, The Public Health and Welfare] redesignated by this Act shall be deemed to refer to such section or subdivision of a section as so redesignated.''

§ 3102. Deduction of tax from wages

(a) Requirement

The tax imposed by section 3101 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. An employer who in any calendar year pays to an employee cash remuneration to which paragraph (7)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than the applicable dollar threshold (as defined in section 3121(x)) for such year; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (7)(C) or (10) of section 3121(a) is applicable may

deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than $100; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (8)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than $150; and an employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (12)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax with respect to such tips from any wages of the employee (exclusive of tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than $20.

(b) Indemnification of employer

Every employer required so to deduct the tax shall be liable for the payment of such tax, and shall be indemnified against the claims and demands of any person for the amount of any such payment made by such employer.

(c) Special rule for tips

(1) In the case of tips which constitute wages, subsection (a) shall be applicable only to such tips as are included in a written statement furnished to the employer pursuant to section 6053(a), and only to the extent that collection can be made by the employer, at or after the time such statement is so furnished and before the close of the 10th day following the calendar month (or, if paragraph (3) applies, the 30th day following the year) in which the tips were deemed paid, by deducting the amount of the tax from such wages of the employee (excluding tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) as are under control of the employer.

(2) If the tax imposed by section 3101, with respect to tips which are included in written statements furnished in any month to the employer pursuant to section 6053(a), exceeds the wages of the employee (excluding tips) from which the employer is required to collect the tax under paragraph (1), the employee may furnish to the employer on or before the 10th day of the following month (or, if paragraph (3) applies, on or before the 30th day of the following year) an amount of money equal to the amount of the excess.

(3) The Secretary may, under regulations prescribed by him, authorize employers—

(A) to estimate the amount of tips that will be reported by the employee pursuant to section 6053(a) in any calendar year,

(B) to determine the amount to be deducted upon each payment of wages (exclusive of tips) during such year as if the tips so estimated constituted the actual tips so reported, and

(C) to deduct upon any payment of wages (other than tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) to such employee during such year (and within 30 days thereafter) such amount as may be necessary to adjust the amount actually deducted upon such wages of the employee during the year to the amount required to be deducted in respect of tips included in written statements furnished to the employer during the year.

(4) If the tax imposed by section 3101 with respect to tips which constitute wages exceeds the portion of such tax which can be collected by the employer from the wages of the employee pursuant to paragraph (1) or paragraph (3), such excess shall be paid by the employee.

(d) Special rule for certain taxable group-term life insurance benefits

(1) In general

In the case of any payment for group-term life insurance to which this subsection applies—

(A) subsection (a) shall not apply,

(B) the employer shall separately include on the statement required under section 6051—

(i) the portion of the wages which consists of payments for group-term life insurance to which this subsection applies, and

(ii) the amount of the tax imposed by section 3101 on such payments, and

(C) the tax imposed by section 3101 on such payments shall be paid by the employee.

(2) Benefits to which subsection applies

This subsection shall apply to any payment for group-term life insurance to the extent—

(A) such payment constitutes wages, and

(B) such payment is for coverage for periods during which an employment relationship no longer exists between the employee and the employer.

(e) Special rule for certain transferred Federal employees

In the case of any payments of wages for service performed in the employ of an international organization pursuant to a transfer to which the provisions of section 3121(y) are applicable—

(1) subsection (a) shall not apply,

(2) the head of the Federal agency from which the transfer was made shall separately include on the statement required under section 6051—

(A) the amount determined to be the amount of the wages for such service, and

(B) the amount of the tax imposed by section 3101 on such payments, and

(3) the tax imposed by section 3101 on such payments shall be paid by the employee.

(Aug. 16, 1954, ch. 736, 68A Stat. 415; Sept. 1, 1954, ch. 1206, title II, § 205A, 68 Stat. 1093; Aug. 1, 1956, ch. 836, title II, § 201(h)(3), 70 Stat. 841; Pub. L. 89–97, title III, § 313(c)(1), (2), July 30, 1965, 79 Stat. 382, 383; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–216, title III, § 355(a), (b), Dec. 20, 1977, 91 Stat. 1555; Pub. L. 101–508, title V, § 5124(a), Nov. 5, 1990, 104 Stat. 1388–284; Pub. L. 103–296, title III,

§ 319(a)(3), Aug. 15, 1994, 108 Stat. 1534; Pub. L. 103–387, § 2(a)(1)(D), Oct. 22, 1994, 108 Stat. 4072; Pub. L. 108–203, title IV, § 424(b), Mar. 2, 2004, 118 Stat. 536; Pub. L. 111–148, title IX, § 9015(a)(2), Mar. 23, 2010, 124 Stat. 871.)

AMENDMENT OF SECTION

Pub. L. 111–148, title IX, § 9015(a)(2), (c), Mar. 23, 2010, 124 Stat. 871, 872, provided that, applicable with respect to remuneration received, and taxable years beginning, after Dec. 31, 2012, this section is amended by adding at the end the following new subsection:

(f) Special rules for additional tax

(1) In general

In the case of any tax imposed by section 3101(b)(2), subsection (a) shall only apply to the extent to which the taxpayer receives wages from the employer in excess of $200,000, and the employer may disregard the amount of wages received by such taxpayer's spouse.

(2) Collection of amounts not withheld

To the extent that the amount of any tax imposed by section 3101(b)(2) is not collected by the employer, such tax shall be paid by the employee.

(3) Tax paid by recipient

If an employer, in violation of this chapter, fails to deduct and withhold the tax imposed by section 3101(b)(2) and thereafter the tax is paid by the employee, the tax so required to be deducted and withheld shall not be collected from the employer, but this paragraph shall in no case relieve the employer from liability for any penalties or additions to tax otherwise applicable in respect of such failure to deduct and withhold.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–203 struck out ''and the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis'' after ''less than $150''.

1994—Subsec. (a). Pub. L. 103–387 in second sentence substituted ''An employer who in any calendar year'' for ''An employer who in any calendar quarter'' and ''remuneration paid to the employee by the employer in the calendar year is less than the applicable dollar threshold (as defined in section 3121(x)) for such year'' for ''remuneration paid to the employee by the employer in the calendar quarter is less than $50''.

Subsec. (e). Pub. L. 103–296 added subsec. (e).

1990—Subsec. (d). Pub. L. 101–508 added subsec. (d).

1977—Subsec. (a). Pub. L. 95–216, § 355(a), substituted ''cash remuneration to which paragraph (7)(B) of section 3121(a) is applicable'' for ''cash remuneration to which paragraph (7)(B) or (C) or (10) of section 3121(a) is applicable'' and inserted ''and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (7)(C) or (10) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than $100;''.

Subsec. (c)(1), (2). Pub. L. 95–216, § 355(b)(1), substituted ''year'' for ''quarter'' wherever appearing.

Subsec. (c)(3)(A). Pub. L. 95–216, § 355(b)(2)(A), substituted ''in any calendar year'' for ''in any quarter of the calendar year''.

Subsec. (c)(3)(B), (C). Pub. L. 95–216, § 355(b)(2)(B), substituted ''year'' for ''quarter'' wherever appearing.

1976—Subsec. (c)(3). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1965—Subsec. (a). Pub. L. 89–97, § 313(c)(2), inserted provisions at end of second sentence allowing a deduction from any wages of an employee of an amount equivalent to the tax on tips when an employer is furnished with a written statement of tips received by an employee.

Subsec. (c). Pub. L. 89–97, § 313(c)(1), added subsec. (c).

1956—Subsec. (a). Act Aug. 1, 1956, substituted ''$150 and the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis'' for ''$100''.

1954—Subsec. (a). Act Sept. 1, 1954, inserted last sentence permitting in certain instances an employer to deduct employee tax even though payment to employee is less than $50 for calendar quarter or $100 for calendar year.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 applicable with respect to remuneration received, and taxable years beginning, after Dec. 31, 2012, see section 9015(c) of Pub. L. 111–148, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1994 AMENDMENTS

Section 2(a)(3) of Pub. L. 103–387 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section, section 3121 of this title, and sections 409 and 410 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1993.

''(B) EXCLUDED EMPLOYMENT.—The amendments made by paragraphs (1)(C) and (2)(B) [amending section 3121 of this title and section 410 of Title 42] shall apply to services performed after December 31, 1994.''

Amendment by Pub. L. 103–296 applicable with respect to service performed after calendar quarter following calendar quarter in which Aug. 15, 1994, occurs, see section 319(c) of Pub. L. 103–296, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5124(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 3202 of this title] shall apply to coverage provided after December 31, 1990.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 355(c) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section] shall apply with respect to remuneration paid and to tips received after December 31, 1977.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89–97, set out as an Effective Date note under section 6053 of this title.

NO LOSS OF SOCIAL SECURITY COVERAGE FOR 1994; CONTINUATION OF W–2 FILING REQUIREMENT

Section 2(a)(4) of Pub. L. 103–387 provided that: ''Notwithstanding the amendments made by this subsection [amending this section, section 3121 of this title, and sections 409 and 410 of Title 42, The Public Health and Welfare], if the wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) paid during 1994 to an employee for domestic service in a private home of the employer are less than $1,000—

''(A) the employer shall file any return or statement required under section 6051 of such Code with respect to such wages (determined without regard to such amendments), and

''(B) the employee shall be entitled to credit under section 209 of the Social Security Act [42 U.S.C. 409] with respect to any such wages required to be included on any such return or statement.''

Subchapter B—Tax on Employers

Sec.
3111. Rate of tax.
3112. Instrumentalities of the United States.
[3113. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title XIX, § 1903(b), Oct. 4, 1976, 90 Stat. 1810, struck out item 3113 ''District of Columbia credit unions''.

1956—Act Aug. 1, 1956, ch. 836, title II, § 201(a)(2), 70 Stat. 839, added item 3113.

§ 3111. Rate of tax

(a) Old-age, survivors, and disability insurance

In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a)) paid by him with respect to employment (as defined in section 3121(b))—

In cases of wages paid during:	The rate shall be:
1984, 1985, 1986, or 1987	5.7 percent
1988 or 1989	6.06 percent
1990 or thereafter	6.2 percent.

(b) Hospital insurance

In addition to the tax imposed by the preceding subsection, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a)) paid by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages paid during the calendar years 1974 through 1977, the rate shall be 0.90 percent;

(2) with respect to wages paid during the calendar year 1978, the rate shall be 1.00 percent;

(3) with respect to wages paid during the calendar years 1979 and 1980, the rate shall be 1.05 percent;

(4) with respect to wages paid during the calendar years 1981 through 1984, the rate shall be 1.30 percent;

(5) with respect to wages paid during the calendar year 1985, the rate shall be 1.35 percent; and

(6) with respect to wages paid after December 31, 1985, the rate shall be 1.45 percent.

(c) Relief from taxes in cases covered by certain international agreements

During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, wages received by or paid to an individual shall be exempt from the taxes imposed by this section to the extent that such wages are subject under such agreement exclusively to the laws applicable to the social security system of such foreign country.

(d) Special exemption for certain individuals hired in 2010

(1) In general

Subsection (a) shall not apply to wages paid by a qualified employer with respect to employment during the period beginning on the day after the date of the enactment of this subsection and ending on December 31, 2010, of any qualified individual for services performed—

(A) in a trade or business of such qualified employer, or

(B) in the case of a qualified employer exempt from tax under section 501(a), in furtherance of the activities related to the purpose or function constituting the basis of the employer's exemption under section 501.

(2) Qualified employer

For purposes of this subsection—

(A) In general

The term ''qualified employer'' means any employer other than the United States, any State, or any political subdivision thereof, or any instrumentality of the foregoing.

(B) Treatment of employees of post-secondary educational institutions

Notwithstanding subparagraph (A), the term ''qualified employer'' includes any employer which is a public institution of higher education (as defined in section 101(b) of the Higher Education Act of 1965).

(3) Qualified individual

For purposes of this subsection, the term ''qualified individual'' means any individual who—

(A) begins employment with a qualified employer after February 3, 2010, and before January 1, 2011,

(B) certifies by signed affidavit, under penalties of perjury, that such individual has not been employed for more than 40 hours during the 60-day period ending on the date such individual begins such employment,

(C) is not employed by the qualified employer to replace another employee of such employer unless such other employee separated from employment voluntarily or for cause, and

(D) is not an individual described in section 51(i)(1) (applied by substituting ''qualified employer'' for ''taxpayer'' each place it appears).

(4) Election

A qualified employer may elect to have this subsection not apply. Such election shall be made in such manner as the Secretary may require.

(5) Special rule for first calendar quarter of 2010

(A) Nonapplication of exemption during first quarter

Paragraph (1) shall not apply with respect to wages paid during the first calendar quarter of 2010.

(B) Crediting of first quarter exemption during second quarter

The amount by which the tax imposed under subsection (a) would (but for subparagraph (A)) have been reduced with respect to wages paid by a qualified employer during the first calendar quarter of 2010 shall be treated as a payment against the tax imposed under subsection (a) with respect to the qualified employer for the second cal-

endar quarter of 2010 which is made on the date that such tax is due.

(Aug. 16, 1954, ch. 736, 68A Stat. 416; Sept. 1, 1954, ch. 1206, title II, §208(c), 68 Stat. 1094; Aug. 1, 1956. ch. 836, title II, §202(c), 70 Stat. 845; Pub. L. 85–840, title IV, §401(c), Aug. 28, 1958, 72 Stat. 1042; Pub. L. 87–64, title II, §201(c), June 30, 1961, 75 Stat. 141; Pub. L. 89–97, title I, §111(c)(6), title III, §321(c), July 30, 1965, 79 Stat. 343, 396; Pub. L. 90–248, title I, §109(a)(3), (b)(3), Jan. 2, 1968, 81 Stat. 836, 837; Pub. L. 92–5, title II, §204(a)(2), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92–336, title II, §204(a)(3), (b)(3), July 1, 1972, 86 Stat. 421, 422; Pub. L. 92–603, title I, §135(a)(3), (b)(3), Oct. 30, 1972, 86 Stat. 1363, 1364; Pub. L. 93–233, §6(a)(2), (b)(3), Dec. 31, 1973, 87 Stat. 954, 955; Pub. L. 94–455, title XIX, §1903(a)(1), Oct. 4, 1976, 90 Stat. 1806; Pub. L. 95–216, title I, §101(a)(2), (b)(2), title III, §§315(b), 317(b)(2), Dec. 20, 1977, 91 Stat. 1511, 1512, 1537, 1540; Pub. L. 98–21, title I, §123(a)(2), Apr. 20, 1983, 97 Stat. 88; Pub. L. 100–203, title IX, §9006(b)(1), Dec. 22, 1987, 101 Stat. 1330–289; Pub. L. 100–647, title VIII, §8016(a)(5), Nov. 10, 1988, 102 Stat. 3793; Pub. L. 108–203, title IV, §415, Mar. 2, 2004, 118 Stat. 530; Pub. L. 111–147, title I, §101(a), Mar. 18, 2010, 124 Stat. 72.)

REFERENCES IN TEXT

Section 233 of the Social Security Act, referred to in subsec. (c), is classified to section 433 of Title 42, The Public Health and Welfare.

The date of the enactment of this subsection, referred to in subsec. (d)(1), is the date of the enactment of Pub. L. 111–147, which was approved Mar. 18, 2010.

Section 101(b) of the Higher Education Act of 1965, referred to in subsec. (d)(2)(B), is classified to section 1001(b) of Title 20, Education.

AMENDMENTS

2010—Subsec. (d). Pub. L. 111–147 added subsec. (d).

2004—Subsec. (c). Pub. L. 108–203 substituted ''exclusively to the laws applicable to'' for ''to taxes or contributions for similar purposes under''.

1988—Subsecs. (a), (b). Pub. L. 100–647 made technical correction to directory language of Pub. L. 100–203, §9006(b)(1), see 1987 Amendment note below.

1987—Subsecs. (a), (b). Pub. L. 100–203, as amended by Pub. L. 100–647, struck out ''and (t)'' after ''3121(a)'' in introductory provisions.

1983—Subsec. (a). Pub. L. 98–21 substituted table of rates for pars. (1) to (7) which had imposed a tax on every employer (1) with respect to wages paid during the calendar years 1974 through 1977 at the rate of 4.95 percent, (2) with respect to wages paid during the calendar year 1978 at the rate of 5.05 percent, (3) with respect to wages paid during the calendar years 1979 and 1980 at the rate of 5.08 percent, (4) with respect to wages paid during the calendar year 1981 at the rate of 5.35 percent, (5) with respect to wages paid during the calendar years 1982 through 1984 at the rate of 5.40 percent, (6) with respect to wages paid during the calendar years 1985 through 1989 at the rate of 5.70 percent, and (7) with respect to wages paid after Dec. 31, 1989, at the rate of 6.20 percent.

1977—Subsec. (a). Pub. L. 95–216, §§101(a)(2), 315(b), substituted ''(as defined in section 3121(a) and (t))'' for ''(as defined in section 3121(a))'' in provisions preceding par. (1), substituted ''1974 through 1977'' for ''1974 through 2010'' in par. (1), substituted ''wages paid during the calendar year 1978, the rate shall be 5.05 percent'' for ''wages paid after December 31, 2010, the rate shall be 5.95 percent'' in par. (2), and added pars. (3) to (7).

Subsec. (b). Pub. L. 95–216, §§101(b)(2), 315(b), substituted ''(as defined in section 3121(a) and (t))'' for ''(as defined in section 3121(a))'' in provisions preceding par. (1), substituted ''wages paid during the calendar year 1978, the rate shall be 1.00 percent'' for ''wages paid during the calendar years 1978 through 1980, the rate shall be 1.10 percent'', in par. (2), substituted ''wages paid during the calendar years 1979 and 1980, the rate shall be 1.05 percent'' for wages paid during the calendar years 1981 through 1985, the rate shall be 1.35 percent'' in par. (3), substituted ''wages paid during the calendar years 1981 through 1984, the rate shall be 1.30 percent'' for ''wages paid after December 31, 1985, the rate shall be 1.50 percent'' in par. (4), and added pars. (5) and (6).

Subsec. (c). Pub. L. 95–216, §317(b)(2), added subsec. (c).

1976—Subsec. (a). Pub. L. 94–455, §1903(a)(1)(A), redesignated pars. (5) and (6) as (1) and (2). Former pars. (1) to (4), which related to a tax rate of 3.8 percent with respect to wages received during the taxable year 1968, a tax rate of 4.2 percent with respect to wages received during the calendar year 1969 and 1970, a tax rate of 4.6 percent with respect to wages received during the calendar years 1971 and 1972, and a tax rate of 4.85 percent with respect to wages received during the calendar year 1973, respectively, were struck out.

Subsec. (b). Pub. L. 94–455, §1903(a)(1)(B), redesignated pars. (3) to (6) as (1) to (4), respectively. Former pars. (1) and (2), which related to a tax rate of .60 percent with respect to wages received during the calendar years 1968, 1969, 1970, 1971, and 1972 and a tax rate of 1.0 percent with respect to wages received during the calendar year 1973, respectively, were struck out.

1973—Subsec. (a)(4). Pub. L. 93–233, §6(a)(2), struck out provision for application of 4.85 percent rate of tax during calendar years 1974, 1975, 1976, and 1977.

Subsec. (a)(5). Pub. L. 93–233, §6(a)(2), increased rate of tax from 4.80 percent to 4.95 percent and substituted calendar year ''1974'' to ''1978'' as initial year for application of such rate.

Subsec. (a)(6). Pub. L. 93–233, §6(a)(2), increased rate of tax from 5.85 percent to 5.95 percent.

Subsec. (b)(2). Pub. L. 93–233, §6(b)(3), struck out provision for application of 1.0 percent rate of tax during calendar years 1974, 1975, 1976, and 1977.

Subsec. (b)(3). Pub. L. 93–233, §6(b)(3), incorporated former provision of par. (2) for taxation of wages received during calendar years 1974, 1975, 1976, and 1977, decreased the applicable rate of tax from 1.0 percent to 0.90 percent, and struck out provision for 1.25 percent rate of tax for calendar years 1978, 1979, and 1980.

Subsec. (b)(4). Pub. L. 93–233, §6(b)(3), incorporated former provision of par. (3) for taxation of wages received during calendar years 1978, 1979, and 1980, decreased the applicable rate of tax from 1.25 percent to 1.10 percent, and struck out provision for 1.35 percent rate of tax for calendar years 1981, 1982, 1983, 1984, and 1985.

Subsec. (b)(5). Pub. L. 93–233, §6(b)(3), incorporated former provision of par. (4) for taxation of wages received during calendar years 1981 through 1985 at applicable 1.35 percent rate of tax and struck out provision for 1.45 percent rate of tax for wages received after Dec. 31, 1985.

Subsec. (b)(6). Pub. L. 93–233, §6(b)(3), incorporated former provision of par. (5) for taxation of wages received after Dec. 31, 1985 and increased the applicable rate of tax from 1.45 percent to 1.50 percent.

1972—Subsec. (a)(3). Pub. L. 92–603, §135(a)(3)(A), substituted ''the calendar years 1971 and 1972'' for ''any of the calendar years 1971 through 1977''.

Subsec. (a)(3) to (5). Pub. L. 92–336, §204(a)(3), substituted ''any of the calendar years 1971 through 1977'' for ''the calendar years 1971 and 1972'' in par. (3), ''any of the calendar years 1978 through 2010'' for ''the calendar years 1973, 1974, and 1975'' and ''4.5'' for ''5.0'' in par. (4), and ''December 31, 2010'' for ''December 31, 1975'' and ''5.35'' for ''5.15'' in par. (5).

Subsec. (a)(4). Pub. L. 92–603, §135(a)(3)(B), substituted ''received during the calendar years 1973, 1974, 1975, 1976, and 1977, the rate shall be 4.85 percent;'' for ''received during any of the calendar years 1978 through 2010, the rate shall be 4.5 percent; and''.

Subsec. (a)(5). Pub. L. 92–603, § 135(a)(3)(B), substituted ''received during the calendar years 1978 through 2010, the rate shall be 4.80 percent; and'' for ''received after December 31, 2010, the rate shall be 5.35 percent''.

Subsec. (a)(6). Pub. L. 92–603, § 135(a)(3)(B), added par. (6).

Subsec. (b)(2). Pub. L. 92–603, § 135(b)(3), increased rate to 1.0 percent from 0.9 percent.

Subsec. (b)(2) to (5). Pub. L. 92–336, § 204(b)(3), inserted references to 1976 and 1977 and substituted ''0.9'' for ''0.65'' in par. (2), substituted references for the calendar years 1978 through 1985 for references to the calendar years 1976 through 1979 and substituted ''1.0'' for ''0.70'' in par. (3), substituted references for the calendar years 1986 through 1992 for references to the calendars 1980 through 1986 and substituted ''1.1'' for ''0.80'' in par. (4), and substituted ''1992'' and ''1986'' and ''1.2'' for ''0.9'' in par. (5).

Subsec. (b)(3). Pub. L. 92–603, § 135(b)(3), substituted ''and 1980, the rate shall be 1.25 percent'' for ''1980, 1981, 1982, 1983, 1984, and 1985, the rate shall be 1.0 percent''.

Subsec. (b)(4). Pub. L. 92–603, § 135(b)(3), substituted ''1981, 1982, 1983, 1984, and 1985, the rate shall be 1.35 percent'' for ''1986, 1987, 1988, 1989, 1990, 1991, and 1992, the rate shall be 1.1 percent''.

Subsec. (b)(5). Pub. L. 92–603, § 135(b)(3), substituted ''1985, the rate shall be 1.45 percent'' for ''1992, the rate shall be 1.2 percent''.

1971—Subsec. (a)(4). Pub. L. 92–5 substituted ''with respect to wages paid during the calendar years 1973, 1974, and 1975, the rate shall be 5.0 percent; and'' for ''with respect to wages paid after December 31, 1972, the rate shall be 5.0 percent''.

Subsec. (a)(5). Pub. L. 92–5 added par. (5).

1968—Subsec. (a)(1) to (4). Pub. L. 90–248, § 109(a)(3), substituted ''1968'' and ''3.8'' for ''1966'' and ''3.85'' in par. (1) and ''1969 and 1970'' and ''4.2'' for ''1967 and 1968'' and ''3.9'' in par. (2), struck out reference to calendar years 1969 and 1970 from par. (3) and substituted therein ''4.6'' for ''4.4'', and substituted ''5.0'' for ''4.85'' in par. (4).

Subsecs. (b)(1) to (5). Pub. L. 90–248, § 109(b)(3), struck out par. (1) provision for employer rate of 0.35 percent of wages paid with respect to employment during calendar year 1966, redesignated pars. (2) to (6) as (1) to (5), struck out reference to ''1967'' in such par. (1) and increased the rate by 0.10 percent to 0.60, 0.65, 0.70, 0.80, and 0.90 in pars. (1) to (5), respectively.

1965—Pub. L. 89–97, § 321(c), divided the total excise tax imposed under the entire section upon employers through a tax equal to percentages of wages paid by him into two separate taxes by dividing the section into subsecs. (a) and (b), with subsec. (a) reflecting the tax for old-age, survivors, and disability insurance, and subsec. (b) reflecting the tax for hospital insurance, but, in the case of subsec. (b), without regard to the provisions of section 3121(b)(9) insofar as it relates to employees; increased from 4⅛ percent to 4.20 percent the rate of total tax imposed by the entire section upon wages paid during calendar year 1966 (resulting from a tax of 3.85 percent under subsec. (a) and 0.35 percent under subsec. (b)), increased from 4⅛ percent to 4.40 percent the rate of total tax imposed by the entire section upon wages paid during calendar year 1967 (resulting from a tax of 3.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), reduced from 4⅝ percent to 4.40 percent the rate of total tax imposed by the entire section upon wages paid during calendar year 1968 (resulting from a tax of 3.9 percent under subsec. (a) and 0.50 percent under subsec. (b)), increased from 4⅝ percent to 4.90 percent the rate of total tax imposed by the entire section upon wages paid during the calendar years 1969, 1970, 1971, and 1972 (resulting from a tax of 4.4 percent under subsec. (a) and 0.50 percent under subsec. (b)), increased from 4⅝ percent to 5.40 percent the rate for calendar years 1973, 1974, and 1975 (resulting from a tax of 4.85 percent under subsec. (a) and 0.55 percent under subsec. (b)), increased from 4⅝ percent to 5.45 percent the rate for calendar years 1976, 1977, 1978, and 1979 (resulting from a tax of 4.85 percent under subsec. (a) and 0.60 percent under subsec. (b)), increased from 4⅝ percent to 5.55 percent the rate for calendar years 1980 through 1986 (resulting from a tax of 4.85 percent under subsec. (a) and 0.70 percent under subsec. (b)), and increased the rate from 4⅝ percent to 5.65 percent for calendar years after December 31, 1986 (resulting from a tax of 4.85 percent under subsec. (a) and 0.80 percent under subsec. (b)).

Subsec. (b). Pub. L. 89–97, § 111(c)(6), struck out '', but without regard to the provisions of paragraph (9) thereof insofar as it relates to employees'' after ''as defined in section 3121(b)''.

1961—Pub. L. 87–64 increased rate of tax for calendar year 1962 from 3 to 3⅛ percent, calendar years 1963 to 1965, inclusive, from 3½ to 3⅝ percent, calendar years 1966 and 1967 from 4 to 4⅛ percent, calendar year 1968 from 4 to 4⅝ percent, and for calendar years after December 31, 1968, from 4½ to 4⅝ percent.

1958—Pub. L. 85–840 increased rate of tax by substituting provisions imposing a tax of 2½ percent for calendar year 1959, 3 percent for calendar years 1960–62, 3½ percent for calendar years 1963–65, 4 percent for calendar years 1966–68, and 4½ percent for calendar years beginning after Dec. 31, 1968, for provisions which imposed a tax of 2¼ percent for calendar years 1957–59, 2¾ percent for calendar years 1960–64, 3¼ percent for calendar years 1965–69, 3¾ percent for calendar years 1970–74, and 4¼ percent for calendar years beginning after Dec. 31, 1974.

1956—Act Aug. 1, 1956, increased rate of tax with respect to wages paid during calendar years 1957 to 1959, and for all calendar years thereafter, by one-quarter percent.

1954—Act Sept. 1, 1954, increased 3¼ percent rate of tax for calendar year 1970 and subsequent years to 3½ percent for calendar years 1970 to 1974 and 4 percent for 1975 and subsequent years.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–147 applicable to wages paid after Mar. 18, 2010, see section 101(e) of Pub. L. 111–147, set out as a note under section 51 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8016(b) of Pub. L. 100–647 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section, sections 3121 and 3306 of this title, and sections 405, 410, and 411 of Title 42, The Public Health and Welfare] shall be effective on the date of the enactment of this Act [Nov. 10, 1988].

''(2) Any amendment made by this section to a provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act [42 U.S.C. 301 et seq.] or the Internal Revenue Code of 1986 as added or amended by a provision of a particular Public Law which is so referred to, shall be effective as though it had been included or reflected in the relevant provisions of that Public Law at the time of its enactment.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9006(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and section 3121 of this title] shall apply with respect to tips received (and wages paid) on and after January 1, 1988.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1983, see section 123(a)(3) of Pub. L. 98–21, set out as a note under section 3101 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 101(a)(2), (b)(2) of Pub. L. 95–216 applicable with respect to remuneration paid or received, and taxable years beginning, after 1977, see section 104 of Pub. L. 95–216, set out as a note under section 1401 of this title.

Section 315(c) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section and section 3121 of this title] shall apply with respect to wages paid with respect to employment performed in months after December 1977.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to wages paid after Dec. 31, 1976, see section 1903(d) of Pub. L. 94–455, set out as a note under section 3101 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after December 31, 1973, see section 6(c) of Pub. L. 93–233, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by Pub. L. 92–603 applicable only with respect to remuneration paid after Dec. 31, 1972, see section 135(c) of Pub. L. 92–603, set out as a note under section 1401 of this title.

Amendment by Pub. L. 92–336 applicable only with respect to remuneration paid after December 31, 1972, see section 204(c) of Pub. L. 92–336, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable only with respect to remuneration paid after Dec. 31, 1971, see section 204(b) of Pub. L. 92–5, set out as a note under section 3101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 applicable only with respect to remuneration paid after Dec. 31, 1967, see section 109(c) of Pub. L. 90–248, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 111(c)(6) of Pub. L. 89–97 applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act (section 3201 et seq. of this title) provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act (section 3101 et seq. of this title) provides may be counted for such calendar year, see section 111(e) of Pub. L. 89–97, set out as an Effective Date note under section 1395i–1 of Title 42, The Public Health and Welfare.

Amendment by section 321(c) of Pub. L. 89–97 applicable with respect to remuneration paid after December 31, 1965, see section 321(d) of Pub. L. 89–97, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–64 applicable with respect to remuneration paid after Dec. 31, 1961, see section 201(d) of Pub. L. 87–64, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–840 applicable with respect to remuneration paid after Dec. 31, 1958, see section 401(d) of Pub. L. 85–840, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, applicable with respect to remuneration paid after Dec. 31, 1956, see section 202(d) of such act Aug. 1, 1956, set out as a note under section 1401 of this title.

PENALTIES AND INTEREST NOT ASSESSED FOR FAILURE TO MAKE TIMELY PAYMENT DURING PERIOD JANUARY 1, 1982, TO JUNE 30, 1982, OF TAXES ATTRIBUTABLE TO AMENDMENTS BY PUB. L. 97–123

For provision that no penalties or interest shall be assessed on account of any failure to make timely payment of taxes imposed by this section with respect to payments made for the period Jan. 1, 1982, and ending June 30, 1982, to the extent that such taxes are attributable to section 3 of Pub. L. 97–123 or the amendments made by that section, see section 3(f) of Pub. L. 97–123, set out as a note under section 3101 of this title.

§ 3112. Instrumentalities of the United States

Notwithstanding any other provision of law (whether enacted before or after the enactment of this section) which grants to any instrumentality of the United States an exemption from taxation, such instrumentality shall not be exempt from the tax imposed by section 3111 unless such other provision of law grants a specific exemption, by reference to section 3111 (or the corresponding section of prior law), from the tax imposed by such section.

(Aug. 16, 1954, ch. 736, 68A Stat. 416.)

[§ 3113. Repealed. Pub. L. 94–455, title XIX, § 1903(a)(2), Oct. 4, 1976, 90 Stat. 1806]

Section, added Aug. 1, 1956, ch. 836, title II, § 201(a)(1), 70 Stat. 839, related to a restriction on exemptions from taxation for District of Columbia credit unions with respect to the tax imposed by section 3111 of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to wages paid after Dec. 31, 1976, see section 1903(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 3101 of this title.

Subchapter C—General Provisions

Sec.
3121. Definitions.
3122. Federal service.
3123. Deductions as constructive payments.
3124. Estimate of revenue reduction.
3125. Returns in the case of governmental employees in States, Guam, American Samoa, and the District of Columbia.
3126. Return and payment by governmental employer.
3127. Exemption for employers and their employees where both are members of religious faiths opposed to participation in Social Security Act programs.
3128. Short title.

AMENDMENTS

1988—Pub. L. 100–647, title VIII, § 8007(a)(2), Nov. 10, 1988, 102 Stat. 3782, added item 3127 and redesignated former item 3127 as 3128.

1986—Pub. L. 99–509, title IX, § 9002(a)(2), Oct. 21, 1986, 100 Stat. 1971, added item 3126 and redesignated former item 3126 as 3127.

Pub. L. 99–272, title XIII, § 13205(a)(2)(A)(iii), Apr. 7, 1986, 100 Stat. 315, inserted ''States,'' in item 3125.

1965—Pub. L. 89–97, title III, § 317(c)(3), July 30, 1965, 79 Stat. 389, inserted reference to the District of Columbia in item 3125.

1960—Pub. L. 86–778, title I, § 103(q)(2), Sept. 13, 1960, 74 Stat. 940, added item 3125 and redesignated former item 3125 as 3126.

§ 3121. Definitions

(a) Wages

For purposes of this chapter, the term ''wages'' means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include—

(1) in the case of the taxes imposed by sections 3101(a) and 3111(a) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) with respect to employment has been paid to an individual by an employer during the calendar year with respect to which such contribution and benefit base is effective, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

(2) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term ''wages'' only payments which are received under a workman's compensation law), or

(B) medical or hospitalization expenses in connection with sickness or accident disability, or

(C) death, except that this paragraph does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee;

[(3) Repealed. Pub. L. 98–21, title III, § 324(a)(3)(B), Apr. 20, 1983, 97 Stat. 123]

(4) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;

(5) any payment made 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,

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a),

(C) under a simplified employee pension (as defined in section 408(k)(1)), other than any contributions described in section 408(k)(6),

(D) under or to an annuity contract described in section 403(b), other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise),

(E) under or to an exempt governmental deferred compensation plan (as defined in subsection (v)(3)),

(F) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this paragraph to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974,

(G) under a cafeteria plan (within the meaning of section 125) if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received,

(H) under an arrangement to which section 408(p) applies, other than any elective contributions under paragraph (2)(A)(i) thereof, or

(I) under a plan described in section 457(e)(11)(A)(ii) and maintained by an eligible employer (as defined in section 457(e)(1));

(6) the payment by an employer (without deduction from the remuneration of the employee)—

(A) of the tax imposed upon an employee under section 3101, or

(B) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(7)(A) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business or for domestic service in a private home of the employer;

(B) cash remuneration paid by an employer in any calendar year to an employee for domestic service in a private home of the employer (including domestic service on a farm operated for profit), if the cash remuneration paid in such year by the employer to the employee for such service is less than the applicable dollar threshold (as defined in subsection (x)) for such year;

(C) cash remuneration paid by an employer in any calendar year to an employee for service not in the course of the employer's trade or business, if the cash remuneration paid in such year by the employer to the employee for such service is less than $100. As used in this subparagraph, the term ''service not in the course of the employer's trade or business'' does not include domestic service in a private home of the employer and does not include service described in subsection (g)(5);

(8)(A) remuneration paid in any medium other than cash for agricultural labor;

(B) cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless—

(i) the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or

(ii) the employer's expenditures for agricultural labor in such year equal or exceed $2,500,

except that clause (ii) shall not apply in determining whether remuneration paid to an employee constitutes ''wages'' under this section if such employee (I) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (II) commutes daily from his permanent residence to the farm on which he is so employed, and (III) has been employed in agriculture less than 13 weeks during the preceding calendar year;

[(9) Repealed. Pub. L. 98–21, title III, § 324(a)(3)(B), Apr. 20, 1983, 97 Stat. 123]

(10) remuneration paid by an employer in any calendar year to an employee for service described in subsection (d)(3)(C) (relating to home workers), if the cash remuneration paid in such year by the employer to the employee for such service is less than $100;

(11) remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 (determined without regard to section 274(n));

(12)(A) tips paid in any medium other than cash;

(B) cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is $20 or more;

(13) any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(A) upon or after the termination of an employee's employment relationship because of (i) death, or (ii) retirement for disability, and

(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(14) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(15) any payment made by an employer to an employee, if at the time such payment is made such employee is entitled to disability insurance benefits under section 223(a) of the Social Security Act and such entitlement commenced prior to the calendar year in which such payment is made, and if such employee did not perform any services for such employer during the period for which such payment is made;

(16) remuneration paid by an organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521 in any calendar year to an employee for service rendered in the employ of such organization, if the remuneration paid in such year by the organization to the employee for such service is less than $100;

(17) any contribution, payment, or service provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans);

(18) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127, 129, 134(b)(4), or 134(b)(5);

(19) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119;

(20) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 108(f)(4), 117, or 132;

(21) in the case of a member of an Indian tribe, any remuneration on which no tax is imposed by this chapter by reason of section 7873 (relating to income derived by Indians from exercise of fishing rights);

(22) remuneration on account of—

(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

(B) any disposition by the individual of such stock; or

(23) any benefit or payment which is excludable from the gross income of the employee under section 139B(b).

Nothing in the regulations prescribed for purposes of chapter 24 (relating to income tax withholding) which provides an exclusion from ''wages'' as used in such chapter shall be construed to require a similar exclusion from ''wages'' in the regulations prescribed for purposes of this chapter. Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of the parenthetical matter contained in subparagraph (A) of paragraph (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages.

(b) Employment

For purposes of this chapter, the term ''employment'' means any service, of whatever nature, performed (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee for an American employer (as defined in subsection (h)), or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act; except that such term shall not include—

(1) service performed by foreign agricultural workers lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

(2) domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

(3)(A) service performed by a child under the age of 18 in the employ of his father or mother;

(B) service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual under the age of 21 in the employ of his father or mother, or performed by an individual in the employ of his spouse or son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service performed by an individual in the employ of his son or daughter if—

(i) the employer is a surviving spouse or a divorced individual and has not remarried, or 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 a son, daughter, stepson, or stepdaughter (referred to in clause (ii)) for at least 4 continuous weeks in the calendar quarter in which the service is rendered, and

(ii) a son, daughter, stepson, or stepdaughter of such employer is living in the home, and

(iii) the son, daughter, stepson, or stepdaughter (referred to in clause (ii)) has not attained age 18 or 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 service is rendered;

(4) service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if (A) the individual is employed on and in connection with such vessel or aircraft, when outside the United States and (B)(i) such individual is not a citizen of the United States or (ii) the employer is not an American employer;

(5) service performed in the employ of the United States or any instrumentality of the United States, if such service—

(A) would be excluded from the term ''employment'' for purposes of this title if the provisions of paragraphs (5) and (6) of this subsection as in effect in January 1983 had remained in effect, and

(B) is performed by an individual who—

(i) has been continuously performing service described in subparagraph (A) since December 31, 1983, and for purposes of this clause—

(I) if an individual performing service described in subparagraph (A) returns to the performance of such service after being separated therefrom for a period of less than 366 consecutive days, regardless of whether the period began before, on, or after December 31, 1983, then such service shall be considered continuous,

(II) if an individual performing service described in subparagraph (A) returns to the performance of such service after being detailed or transferred to an international organization as described under section 3343 of subchapter III of chapter 33 of title 5, United States Code, or under section 3581 of chapter 35 of such title, then the service performed for that organization shall be considered service described in subparagraph (A),

(III) if an individual performing service described in subparagraph (A) is reemployed or reinstated after being separated from such service for the purpose of accepting employment with the American Institute in Taiwan as provided under section 3310 of chapter 48 of title 22, United States Code, then the service performed for that Institute shall be con-

sidered service described in subparagraph (A),

(IV) if an individual performing service described in subparagraph (A) returns to the performance of such service after performing service as a member of a uniformed service (including, for purposes of this clause, service in the National Guard and temporary service in the Coast Guard Reserve) and after exercising restoration or reemployment rights as provided under chapter 43 of title 38, United States Code, then the service so performed as a member of a uniformed service shall be considered service described in subparagraph (A), and

(V) if an individual performing service described in subparagraph (A) returns to the performance of such service after employment (by a tribal organization) to which section 105(e)(2)[1] of the Indian Self-Determination Act applies, then the service performed for that tribal organization shall be considered service described in subparagraph (A); or

(ii) is receiving an annuity from the Civil Service Retirement and Disability Fund, or benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed service);

except that this paragraph shall not apply with respect to any such service performed on or after any date on which such individual performs—

(C) service performed as the President or Vice President of the United States,

(D) service performed—

(i) in a position placed in the Executive Schedule under sections 5312 through 5317 of title 5, United States Code,

(ii) as a noncareer appointee in the Senior Executive Service or a noncareer member of the Senior Foreign Service, or

(iii) in a position to which the individual is appointed by the President (or his designee) or the Vice President under section 105(a)(1), 106(a)(1), or 107 (a)(1) or (b)(1) of title 3, United States Code, if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule,

(E) service performed as the Chief Justice of the United States, an Associate Justice of the Supreme Court, a judge of a United States court of appeals, a judge of a United States district court (including the district court of a territory), a judge of the United States Court of Federal Claims, a judge of the United States Court of International Trade, a judge of the United States Tax Court, a United States magistrate judge, or a referee in bankruptcy or United States bankruptcy judge,

(F) service performed as a Member, Delegate, or Resident Commissioner of or to the Congress,

(G) any other service in the legislative branch of the Federal Government if such service—

(i) is performed by an individual who was not subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983, or

(ii) is performed by an individual who has, at any time after December 31, 1983, received a lump-sum payment under section 8342(a) of title 5, United States Code, or under the corresponding provision of the law establishing the other retirement system described in clause (i), or

(iii) is performed by an individual after such individual has otherwise ceased to be subject to subchapter III of chapter 83 of title 5, United States Code (without having an application pending for coverage under such subchapter), while performing service in the legislative branch (determined without regard to the provisions of subparagraph (B) relating to continuity of employment), for any period of time after December 31, 1983,

and for purposes of this subparagraph (G) an individual is subject to such subchapter III or to any such other retirement system at any time only if (a) such individual's pay is subject to deductions, contributions, or similar payments (concurrent with the service being performed at that time) under section 8334(a) of such title 5 or the corresponding provision of the law establishing such other system, or (in a case to which section 8332(k)(1) of such title applies) such individual is making payments of amounts equivalent to such deductions, contributions, or similar payments while on leave without pay, or (b) such individual is receiving an annuity from the Civil Service Retirement and Disability Fund, or is receiving benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), or

(H) service performed by an individual—

(i) on or after the effective date of an election by such individual, under section 301 of the Federal Employees' Retirement System Act of 1986, section 307 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2157), or the Federal Employees' Retirement System Open Enrollment Act of 1997[2] to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, or

(ii) on or after the effective date of an election by such individual, under regulations issued under section 860 of the Foreign Service Act of 1980, to become subject to the Foreign Service Pension System

[1] See References in Text note below.

[2] So in original. Probably should be followed by a comma.

provided in subchapter II of chapter 8 of title I of such Act;

(6) service performed in the employ of the United States or any instrumentality of the United States if such service is performed—

(A) in a penal institution of the United States by an inmate thereof;

(B) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training; or

(C) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

(7) service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, except that this paragraph shall not apply in the case of—

(A) service which, under subsection (j), constitutes covered transportation service,

(B) service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof (including a member of the legislature of any such Government or political subdivision), and, for purposes of this title with respect to the taxes imposed by this chapter—

(i) any person whose service as such an officer or employee is not covered by a retirement system established by a law of the United States shall not, with respect to such service, be regarded as an employee of the United States or any agency or instrumentality thereof, and

(ii) the remuneration for service described in clause (i) (including fees paid to a public official) shall be deemed to have been paid by the Government of Guam or the Government of American Samoa or by a political subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby, whichever is appropriate,

(C) service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States (other than the Federal Employees Retirement System provided in chapter 84 of title 5, United States Code); except that the provisions of this subparagraph shall not be applicable to service performed—

(i) in a hospital or penal institution by a patient or inmate thereof;

(ii) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or as a medical or dental resident in training;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency; or

(iv) by a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis,

(D) service performed in the employ of the Government of Guam (or any instrumentality which is wholly owned by such Government) by an employee properly classified as a temporary or intermittent employee, if such service is not covered by a retirement system established by a law of Guam; except that (i) the provisions of this subparagraph shall not be applicable to services performed by an elected official or a member of the legislature or in a hospital or penal institution by a patient or inmate thereof, and (ii) for purposes of this subparagraph, clauses (i) and (ii) of subparagraph (B) shall apply,

(E) service included under an agreement entered into pursuant to section 218 of the Social Security Act, or

(F) service in the employ of a State (other than the District of Columbia, Guam, or American Samoa), of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, by an individual who is not a member of a retirement system of such State, political subdivision, or instrumentality, except that the provisions of this subparagraph shall not be applicable to service performed—

(i) by an individual who is employed to relieve such individual from unemployment;

(ii) in a hospital, home, or other institution by a patient or inmate thereof;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

(iv) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 218(c)(8)(B) of the Social Security Act for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year; or

(v) by an employee in a position compensated solely on a fee basis which is treated pursuant to section 1402(c)(2)(E) as a trade or business for purposes of inclusion of such fees in net earnings from self-employment;

for purposes of this subparagraph, except as provided in regulations prescribed by the Secretary, the term ''retirement system'' has the meaning given such term by section 218(b)(4) of the Social Security Act;

(8)(A) service 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, except that this subparagraph shall not apply to service performed by a member of such an order in the exercise of such duties, if an election of coverage under subsection (r) is in effect with respect to such order, or with respect to the autonomous subdivision thereof to which such member belongs;

(B) service performed in the employ of a church or qualified church-controlled organization if such church or organization has in effect an election under subsection (w), other than service in an unrelated trade or business (within the meaning of section 513(a));

(9) service performed by an individual as an employee or employee representative as defined in section 3231;

(10) service performed in the employ of—

(A) a school, college, or university, or

(B) an organization described in section 509(a)(3) if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services performed in its employ by a student referred to in section 218(c)(5) of the Social Security Act are covered under the agreement between the Commissioner of Social Security and such State entered into pursuant to section 218 of such Act;

if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

(11) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) if the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law;

(14)(A) service 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;

(B) service 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, or is entitled to be credited with the unsold newspapers or magazines turned back;

(15) service performed in the employ of an international organization, except service which constitutes ''employment'' under subsection (y);

(16) service performed by an individual under an arrangement with the owner or tenant of land pursuant to which—

(A) such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry, and furbearing animals and wildlife) on such land,

(B) the agricultural or horticultural commodities produced by such individual, or the proceeds therefrom, are to be divided between such individual and such owner or tenant, and

(C) the amount of such individual's share depends on the amount of the agricultural or horticultural commodities produced;

(17) service in the employ of any organization which is performed (A) in any year during any part of which such organization is registered, or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, under the Internal Security Act of 1950, as amended, as a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, and (B) after June 30, 1956;

(18) service performed in Guam by a resident of the Republic of the Philippines while in Guam on a temporary basis as a nonimmigrant alien admitted to Guam pursuant to section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii));

(19) Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F), (J), (M), or (Q), as the case may be;

(20) service (other than service described in paragraph (3)(A)) performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of such boat pursuant to which—

(A) such individual does not receive any cash remuneration other than as provided in subparagraph (B) and other than cash remuneration—

(i) which does not exceed $100 per trip;

(ii) which is contingent on a minimum catch; and

(iii) which is paid solely for additional duties (such as mate, engineer, or cook) for which additional cash remuneration is traditional in the industry,

(B) such individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch, and

(C) the amount of such individual's share depends on the amount of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life,

but only if the operating crew of such boat (or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat) is normally made up of fewer than 10 individuals; or

(21) domestic service in a private home of the employer which—

(A) is performed in any year by an individual under the age of 18 during any portion of such year; and

(B) is not the principal occupation of such employee.

For purposes of paragraph (20), the operating crew of a boat shall be treated as normally made up of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals.

(c) Included and excluded service

For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term ''pay period'' means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (b)(9).

(d) Employee

For purposes of this chapter, the term ''employee'' means—

(1) any officer of a corporation; or

(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(3) any individual (other than an individual who is an employee under paragraph (1) or (2)) who performs services for remuneration for any person—

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal;

(B) as a full-time life insurance salesman;

(C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or

(D) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term ''employee'' under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed; or

(4) any individual who performs services that are included under an agreement entered into pursuant to section 218 of the Social Security Act.

(e) State, United States, and citizen

For purposes of this chapter—

(1) State

The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) United States

The term ''United States'' when used in a geographical sense includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

An individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.

(f) American vessel and aircraft

For purposes of this chapter, the term ''American vessel'' means any vessel documented or numbered under the laws of the United States; and 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 its crew 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; and the term ''American aircraft'' means an aircraft registered under the laws of the United States.

(g) Agricultural labor

For purposes of this chapter, the term ''agricultural labor'' includes all service performed—

(1) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended (12 U.S.C. 1141j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4)(A) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(B) in the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar year in which such service is performed;

(C) the provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(5) on a farm operated for profit if such service is not in the course of the employer's trade or business.

As used in this subsection, the term ''farm'' includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(h) American employer

For purposes of this chapter, the term ''American employer'' means an employer which is—

(1) the United States or any instrumentality thereof,

(2) an individual who is a resident of the United States,

(3) a partnership, if two-thirds or more of the partners are residents of the United States,

(4) a trust, if all of the trustees are residents of the United States, or

(5) a corporation organized under the laws of the United States or of any State.

(i) Computation of wages in certain cases

(1) Domestic service

For purposes of this chapter, in the case of domestic service described in subsection (a)(7)(B), any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under such conditions and to such extent as may be prescribed by regulations made under this chapter, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to $1. The amount of any payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of subsection (a)(7)(B).

(2) Service in the uniformed services

For purposes of this chapter, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of subsection (m)(1) are applicable, the term ''wages'' shall, subject to the provisions of subsection (a)(1) of this section, include as such individual's remuneration for such service only (A) his basic pay as described in chapter 3 and section 1009 of title 37, United States Code, in the case of an individual performing service to which subparagraph (A) of such subsection (m)(1) applies, or (B) his compensation for such service as determined under section 206(a) of title 37, United States Code, in the case of an individual performing service to which subparagraph (B) of such subsection (m)(1) applies.

(3) Peace Corps volunteer service

For purposes of this chapter, in the case of an individual performing service, as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable, the term ''wages'' shall, subject to the provisions of subsection (a)(1) of this section, include as such individual's remuneration for such service only amounts paid pursuant to section 5(c) or 6(1) of the Peace Corps Act.

(4) Service performed by certain members of religious orders

For purposes of this chapter, in any case where an individual is a member of a religious

order (as defined in subsection (r)(2)) performing service in the exercise of duties required by such order, and an election of coverage under subsection (r) is in effect with respect to such order or with respect to the autonomous subdivision thereof to which such member belongs, the term ''wages'' shall, subject to the provisions of subsection (a)(1), include as such individual's remuneration for such service the fair market value of any board, lodging, clothing, and other perquisites furnished to such member by such order or subdivision thereof or by any other person or organization pursuant to an agreement with such order or subdivision, except that the amount included as such individual's remuneration under this paragraph shall not be less than $100 a month.

(5) Service performed by certain retired justices and judges

For purposes of this chapter, in the case of an individual performing service under the provisions of section 294 of title 28, United States Code (relating to assignment of retired justices and judges to active duty), the term ''wages'' shall not include any payment under section 371(b) of such title 28 which is received during the period of such service.

(j) Covered transportation service

For purposes of this chapter—

(1) Existing transportation systems—General rule

Except as provided in paragraph (2), all service performed in the employ of a State or political subdivision in connection with its operation of a public transportation system shall constitute covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and prior to 1951.

(2) Existing transportation systems—Cases in which no transportation employees, or only certain employees, are covered

Service performed in the employ of a State or political subdivision in connection with the operation of its public transportation system shall not constitute covered transportation service if—

(A) any part of the transportation system was acquired from private ownership after 1936 and prior to 1951, and substantially all service in connection with the operation of the transportation system was, on December 31, 1950, covered under a general retirement system providing benefits which, by reason of a provision of the State constitution dealing specifically with retirement systems of the State or political subdivisions thereof, cannot be diminished or impaired; or

(B) no part of the transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and prior to 1951;

except that if such State or political subdivision makes an acquisition after 1950 from private ownership of any part of its transportation system, then, in the case of any employee who—

(C) became an employee of such State or political subdivision in connection with and at the time of its acquisition after 1950 of such part, and

(D) prior to such acquisition rendered service in employment (including as employment service covered by an agreement under section 218 of the Social Security Act) in connection with the operation of such part of the transportation system acquired by the State or political subdivision,

the service of such employee in connection with the operation of the transportation system shall constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such part took place, unless on such first day such service of such employee is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees described in subparagraph (C).

(3) Transportation systems acquired after 1950

All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system shall constitute covered transportation service if the transportation system was not operated by the State or political subdivision prior to 1951 and, at the time of its first acquisition (after 1950) from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(4) Definitions

For purposes of this subsection—

(A) The term ''general retirement system'' means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term shall not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(B) A transportation system or a part thereof shall be considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or part thereof acquired constituted employment under this chapter or subchapter A of chapter 9 of the Internal Revenue Code of 1939 or was covered by an agreement made pursuant to section 218 of the Social Security Act and some of such employees became employees of the State or political subdivision in connection with and at the time of such acquisition.

(C) The term ''political subdivision'' includes an instrumentality of—

(i) a State,

(ii) one or more political subdivisions of a State, or

(iii) a State and one or more of its political subdivisions.

[(k) Repealed. Pub. L. 98–21, title I, §102(b)(2), Apr. 20, 1983, 97 Stat. 71]

(*l*) Agreements entered into by American employers with respect to foreign affiliates

(1) Agreement with respect to certain employees of foreign affiliate

The Secretary shall, at the American employer's request, enter into an agreement (in such manner and form as may be prescribed by the Secretary) with any American employer (as defined in subsection (h)) who desires to have the insurance system established by title II of the Social Security Act extended to service performed outside the United States in the employ of any 1 or more of such employer's foreign affiliates (as defined in paragraph (6)) by all employees who are citizens or residents of the United States, except that the agreement shall not apply to any service performed by, or remuneration paid to, an employee if such service or remuneration would be excluded from the term ''employment'' or ''wages'', as defined in this section, had the service been performed in the United States. Such agreement may be amended at any time so as to be made applicable, in the same manner and under the same conditions, with respect to any other foreign affiliate of such American employer. Such agreement shall be applicable with respect to citizens or residents of the United States who, on or after the effective date of the agreement, are employees of and perform services outside the United States for any foreign affiliate specified in the agreement. Such agreement shall provide—

(A) that the American employer shall pay to the Secretary, at such time or times as the Secretary may by regulations prescribe, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 (including amounts equivalent to the interest, additions to the taxes, additional amounts, and penalties which would be applicable) with respect to the remuneration which would be wages if the services covered by the agreement constituted employment as defined in this section; and

(B) that the American employer will comply with such regulations relating to payments and reports as the Secretary may prescribe to carry out the purposes of this subsection.

(2) Effective period of agreement

An agreement entered into pursuant to paragraph (1) shall be in effect for the period beginning with the first day of the calendar quarter in which such agreement is entered into or the first day of the succeeding calendar quarter, as may be specified in the agreement; except that in case such agreement is amended to include the services performed for any other affiliate and such amendment is executed after the first month following the first calendar quarter for which the agreement is in effect, the agreement shall be in effect with respect to service performed for such other affiliate only after the calendar quarter in which such amendment is executed. Notwithstanding any other provision of this subsection, the period for which any such agreement is effective with respect to any foreign entity shall terminate at the end of any calendar quarter in which the foreign entity, at any time in such quarter, ceases to be a foreign affiliate as defined in paragraph (6).

(3) No termination of agreement

No agreement under this subsection may be terminated, either in its entirety or with respect to any foreign affiliate, on or after June 15, 1989.

(4) Deposits in trust funds

For purposes of section 201 of the Social Security Act, relating to appropriations to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, such remuneration—

(A) paid for services covered by an agreement entered into pursuant to paragraph (1) as would be wages if the services constituted employment, and

(B) as is reported to the Secretary pursuant to the provisions of such agreement or of the regulations issued under this subsection,

shall be considered wages subject to the taxes imposed by this chapter.

(5) Overpayments and underpayments

(A) If more or less than the correct amount due under an agreement entered into pursuant to this subsection is paid with respect to any payment of remuneration, proper adjustments with respect to the amounts due under such agreement shall be made, without interest, in such manner and at such times as may be required by regulations prescribed by the Secretary.

(B) If an overpayment cannot be adjusted under subparagraph (A), the amount thereof shall be paid by the Secretary, through the Fiscal Service of the Treasury Department, but only if a claim for such overpayment is filed with the Secretary within two years from the time such overpayment was made.

(6) Foreign affiliate defined

For purposes of this subsection and section 210(a) of the Social Security Act—

(A) In general

A foreign affiliate of an American employer is any foreign entity in which such American employer has not less than a 10-percent interest.

(B) Determination of 10-percent interest

For purposes of subparagraph (A), an American employer has a 10-percent interest in any entity if such employer has such an interest directly (or through one or more entities)—

(i) in the case of a corporation, in the voting stock thereof, and

(ii) in the case of any other entity, in the profits thereof.

(7) American employer as separate entity

Each American employer which enters into an agreement pursuant to paragraph (1) of this

subsection shall, for purposes of this subsection and section 6413(c)(2)(C), relating to special refunds in the case of employees of certain foreign entities, be considered an employer in its capacity as a party to such agreement separate and distinct from its identity as a person employing individuals on its own account.

(8) Regulations

Regulations of the Secretary to carry out the purposes of this subsection shall be designed to make the requirements imposed on American employers with respect to services covered by an agreement entered into pursuant to this subsection the same, so far as practicable, as those imposed upon employers pursuant to this title with respect to the taxes imposed by this chapter.

(m) Service in the uniformed services

For purposes of this chapter—

(1) Inclusion of service

The term ''employment'' shall, notwithstanding the provisions of subsection (b) of this section, include—

(A) service performed by an individual as a member of a uniformed service on active duty, but such term shall not include any such service which is performed while on leave without pay, and

(B) service performed by an individual as a member of a uniformed service on inactive duty training.

(2) Active duty

The term ''active duty'' means ''active duty'' as described in paragraph (21) of section 101 of title 38, United States Code, except that it shall also include ''active duty for training'' as described in paragraph (22) of such section.

(3) Inactive duty training

The term ''inactive duty training'' means ''inactive duty training'' as described in paragraph (23) of such section 101.

(n) Member of a uniformed service

For purposes of this chapter, the term ''member of a uniformed service'' means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including a reserve component as defined in section 101(27) of title 38, United States Code), or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey, the National Oceanic and Atmospheric Administration Corps, or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

(1) a retired member of any of those services;

(2) a member of the Fleet Reserve or Fleet Marine Corps Reserve;

(3) a cadet at the United States Military Academy, a midshipman at the United States Naval Academy, and a cadet at the United States Coast Guard Academy or United States Air Force Academy;

(4) a member of the Reserve Officers' Training Corps, the Naval Reserve Officers' Training Corps, or the Air Force Reserve Officers' Training Corps, when ordered to annual training duty for fourteen days or more, and while performing authorized travel to and from that duty; and

(5) any person while en route to or from, or at, a place for final acceptance or for entry upon active duty in the military, naval, or air service—

(A) who has been provisionally accepted for such duty; or

(B) who, under the Military Selective Service Act, has been selected for active military, naval, or air service;

and has been ordered or directed to proceed to such place.

The term does not include a temporary member of the Coast Guard Reserve.

(*o*) Crew leader

For purposes of this chapter, the term ''crew leader'' means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person; and such individuals furnished by the crew leader to perform agricultural labor for another person shall be deemed to be the employees of such crew leader. For purposes of this chapter and chapter 2, a crew leader shall, with respect to service performed in furnishing individuals to perform agricultural labor for another person and service performed as a member of the crew, be deemed not to be an employee of such other person.

(p) Peace Corps volunteer service

For purposes of this chapter, the term ''employment'' shall, notwithstanding the provisions of subsection (b) of this section, include service performed by an individual as a volunteer or volunteer leader within the meaning of the Peace Corps Act.

(q) Tips included for both employee and employer taxes

For purposes of this chapter, tips received by an employee in the course of his employment shall be considered remuneration for such employment (and deemed to have been paid by the employer for purposes of subsections (a) and (b) of section 3111). Such remuneration shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received; except that, in determining the employer's liability in connection with the taxes imposed by section 3111 with respect to such tips in any case where no statement including such tips was so furnished (or to the extent that the statement so furnished was inaccurate or incomplete), such remuneration shall be deemed for purposes of subtitle F to be paid on the date on which notice and demand for such taxes is made to the employer by the Secretary.

(r) Election of coverage by religious orders

(1) Certificate of election by order

A religious order whose members are required to take a vow of poverty, or any autonomous subdivision of such order, may file a certificate (in such form and manner, and with such official, as may be prescribed by regulations under this chapter) electing to have the insurance system established by title II of the Social Security Act extended to services performed by its members in the exercise of duties required by such order or such subdivision thereof. Such certificate of election shall provide that—

(A) such election of coverage by such order or subdivision shall be irrevocable;

(B) such election shall apply to all current and future members of such order, or in the case of a subdivision thereof to all current and future members of such order who belong to such subdivision;

(C) all services performed by a member of such an order or subdivision in the exercise of duties required by such order or subdivision shall be deemed to have been performed by such member as an employee of such order or subdivision; and

(D) the wages of each member, upon which such order or subdivision shall pay the taxes imposed by sections 3101 and 3111, will be determined as provided in subsection (i)(4).

(2) Definition of member

For purposes of this subsection, a member of a religious order means any individual who is subject to a vow of poverty as a member of such order and who performs tasks usually required (and to the extent usually required) of an active member of such order and who is not considered retired because of old age or total disability.

(3) Effective date for election

(A) A certificate of election of coverage shall be in effect, for purposes of subsection (b)(8) and for purposes of section 210(a)(8) of the Social Security Act, for the period beginning with whichever of the following may be designated by the order or subdivision thereof:

(i) the first day of the calendar quarter in which the certificate is filed,

(ii) the first day of the calendar quarter succeeding such quarter, or

(iii) the first day of any calendar quarter preceding the calendar quarter in which the certificate is filed, except that such date may not be earlier than the first day of the twentieth calendar quarter preceding the quarter in which such certificate is filed.

Whenever a date is designated under clause (iii), the election shall apply to services performed before the quarter in which the certificate is filed only if the member performing such services was a member at the time such services were performed and is living on the first day of the quarter in which such certificate is filed.

(B) If a certificate of election filed pursuant to this subsection is effective for one or more calendar quarters prior to the quarter in which such certificate is filed, then—

(i) for purposes of computing interest and for purposes of section 6651 (relating to addition to tax for failure to file tax return), the due date for the return and payment of the tax for such prior calendar quarters resulting from the filing of such certificate shall be the last day of the calendar month following the calendar quarter in which the certificate is filed; and

(ii) the statutory period for the assessment of such tax shall not expire before the expiration of 3 years from such due date.

[(4) Repealed. Pub. L. 98–21, title I, § 102(b)(3)(B), Apr. 20, 1983, 97 Stat. 71]

(s) Concurrent employment by two or more employers

For purposes of sections 3102, 3111, and 3121(a)(1), if two or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

[(t) Repealed. Pub. L. 100–203, title IX, § 9006(b)(2), Dec. 22, 1987, 101 Stat. 1330–289]

(u) Application of hospital insurance tax to Federal, State, and local employment

(1) Federal employment

For purposes of the taxes imposed by sections 3101(b) and 3111(b), subsection (b) shall be applied without regard to paragraph (5) thereof.

(2) State and local employment

For purposes of the taxes imposed by sections 3101(b) and 3111(b)—

(A) In general

Except as provided in subparagraphs (B) and (C), subsection (b) shall be applied without regard to paragraph (7) thereof.

(B) Exception for certain services

Service shall not be treated as employment by reason of subparagraph (A) if—

(i) the service is included under an agreement under section 218 of the Social Security Act, or

(ii) the service is performed—

(I) by an individual who is employed by a State or political subdivision thereof to relieve him from unemployment,

(II) in a hospital, home, or other institution by a patient or inmate thereof as an employee of a State or political subdivision thereof or of the District of Columbia,

(III) by an individual, as an employee of a State or political subdivision thereof or of the District of Columbia, serving on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency,

(IV) by any individual as an employee included under section 5351(2) of title 5,

United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or a medical or dental resident in training,

(V) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 218(c)(8)(B) of the Social Security Act for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year, or

(VI) by an individual in a position described in section 1402(c)(2)(E).

As used in this subparagraph, the terms ''State'' and ''political subdivision'' have the meanings given those terms in section 218(b) of the Social Security Act.

(C) Exception for current employment which continues

Service performed for an employer shall not be treated as employment by reason of subparagraph (A) if—

(i) such service would be excluded from the term ''employment'' for purposes of this chapter if subparagraph (A) did not apply;

(ii) such service is performed by an individual—

(I) who was performing substantial and regular service for remuneration for that employer before April 1, 1986,

(II) who is a bona fide employee of that employer on March 31, 1986, and

(III) whose employment relationship with that employer was not entered into for purposes of meeting the requirements of this subparagraph; and

(iii) the employment relationship with that employer has not been terminated after March 31, 1986.

(D) Treatment of agencies and instrumentalities

For purposes of subparagraph (C), under regulations—

(i) All agencies and instrumentalities of a State (as defined in section 218(b) of the Social Security Act) or of the District of Columbia shall be treated as a single employer.

(ii) All agencies and instrumentalities of a political subdivision of a State (as so defined) shall be treated as a single employer and shall not be treated as described in clause (i).

(3) Medicare qualified government employment

For purposes of this chapter, the term ''medicare qualified government employment'' means service which—

(A) is employment (as defined in subsection (b)) with the application of paragraphs (1) and (2), but

(B) would not be employment (as so defined) without the application of such paragraphs.

(v) Treatment of certain deferred compensation and salary reduction arrangements

(1) Certain employer contributions treated as wages

Nothing in any paragraph of subsection (a) (other than paragraph (1)) shall exclude from the term ''wages''—

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not included in gross income by reason of section 402(e)(3) or consisting of designated Roth contributions (as defined in section 402A(c)), or

(B) any amount treated as an employer contribution under section 414(h)(2) where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).

(2) Treatment of certain nonqualified deferred compensation plans

(A) In general

Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this chapter as of the later of—

(i) when the services are performed, or

(ii) when there is no substantial risk of forfeiture of the rights to such amount.

The preceding sentence shall not apply to any excess parachute payment (as defined in section 280G(b)) or to any specified stock compensation (as defined in section 4985) on which tax is imposed by section 4985.

(B) Taxed only once

Any amount taken into account as wages by reason of subparagraph (A) (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this chapter.

(C) Nonqualified deferred compensation plan

For purposes of this paragraph, the term ''nonqualified deferred compensation plan'' means any plan or other arrangement for deferral of compensation other than a plan described in subsection (a)(5).

(3) Exempt governmental deferred compensation plan

For purposes of subsection (a)(5), the term ''exempt governmental deferred compensation plan'' means any plan providing for deferral of compensation established and maintained for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing. Such term shall not include—

(A) any plan to which section 83, 402(b), 403(c), 457(a), or 457(f)(1) applies,

(B) any annuity contract described in section 403(b), and

(C) the Thrift Savings Fund (within the meaning of subchapter III of chapter 84 of title 5, United States Code).

(w) Exemption of churches and qualified church-controlled organizations

(1) General rule

Any church or qualified church-controlled organization (as defined in paragraph (3)) may make an election within the time period described in paragraph (2), in accordance with such procedures as the Secretary determines to be appropriate, that services performed in the employ of such church or organization shall be excluded from employment for purposes of title II of the Social Security Act and this chapter. An election may be made under this subsection only if the church or qualified church-controlled organization states that such church or organization is opposed for religious reasons to the payment of the tax imposed under section 3111.

(2) Timing and duration of election

An election under this subsection must be made prior to the first date, more than 90 days after July 18, 1984, on which a quarterly employment tax return for the tax imposed under section 3111 is due, or would be due but for the election, from such church or organization. An election under this subsection shall apply to current and future employees, and shall apply to service performed after December 31, 1983. The election may be revoked by the church or organization under regulations prescribed by the Secretary. The election shall be revoked by the Secretary if such church or organization fails to furnish the information required under section 6051 to the Secretary for a period of 2 years or more with respect to remuneration paid for such services by such church or organization, and, upon request by the Secretary, fails to furnish all such previously unfurnished information for the period covered by the election. Any revocation under the preceding sentence shall apply retroactively to the beginning of the 2-year period for which the information was not furnished.

(3) Definitions

(A) For purposes of this subsection, the term ''church'' means a church, a convention or association of churches, or an elementary or secondary school which is controlled, operated, or principally supported by a church or by a convention or association of churches.

(B) For purposes of this subsection, the term ''qualified church-controlled organization'' means any church-controlled tax-exempt organization described in section 501(c)(3), other than an organization which—

(i) offers goods, services, or facilities for sale, other than on an incidental basis, to the general public, other than goods, services, or facilities which are sold at a nominal charge which is substantially less than the cost of providing such goods, services, or facilities; and

(ii) normally receives more than 25 percent of its support from either (I) governmental sources, or (II) receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in activities which are not unrelated trades or businesses, or both.

(x) Applicable dollar threshold

For purposes of subsection (a)(7)(B), the term ''applicable dollar threshold'' means $1,000. In the case of calendar years after 1995, the Commissioner of Social Security shall adjust such $1,000 amount at the same time and in the same manner as under section 215(a)(1)(B)(ii) of the Social Security Act with respect to the amounts referred to in section 215(a)(1)(B)(i) of such Act, except that, for purposes of this paragraph, 1993 shall be substituted for the calendar year referred to in section 215(a)(1)(B)(ii)(II) of such Act. If any amount as adjusted under the preceding sentence is not a multiple of $100, such amount shall be rounded to the next lowest multiple of $100.

(y) Service in the employ of international organizations by certain transferred Federal employees

(1) In general

For purposes of this chapter, service performed in the employ of an international organization by an individual pursuant to a transfer of such individual to such international organization pursuant to section 3582 of title 5, United States Code, shall constitute ''employment'' if—

(A) immediately before such transfer, such individual performed service with a Federal agency which constituted ''employment'' under subsection (b) for purposes of the taxes imposed by sections 3101(a) and 3111(a), and

(B) such individual would be entitled, upon separation from such international organization and proper application, to reemployment with such Federal agency under such section 3582.

(2) Definitions

For purposes of this subsection—

(A) Federal agency

The term ''Federal agency'' means an agency, as defined in section 3581(1) of title 5, United States Code.

(B) International organization

The term ''international organization'' has the meaning provided such term by section 3581(3) of title 5, United States Code.

(z) Treatment of certain foreign persons as American employers

(1) In general

If any employee of a foreign person is performing services in connection with a contract between the United States Government (or any instrumentality thereof) and any member of any domestically controlled group of entities which includes such foreign person, such foreign person shall be treated for purposes of this chapter as an American employer with respect to such services performed by such employee.

(2) Domestically controlled group of entities

For purposes of this subsection—

(A) In general

The term ''domestically controlled group of entities'' means a controlled group of en-

tities the common parent of which is a domestic corporation.

(B) Controlled group of entities

The term ''controlled group of entities'' means a controlled group of corporations as defined in section 1563(a)(1), except that—

(i) ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears therein, and

(ii) the determination shall be made without regard to subsections (a)(4) and (b)(2) of section 1563.

A partnership or any other entity (other than a corporation) shall be treated as a member of a controlled group of entities if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

(3) Liability of common parent

In the case of a foreign person who is a member of any domestically controlled group of entities, the common parent of such group shall be jointly and severally liable for any tax under this chapter for which such foreign person is liable by reason of this subsection, and for any penalty imposed on such person by this title with respect to any failure to pay such tax or to file any return or statement with respect to such tax or wages subject to such tax. No deduction shall be allowed under this title for any liability imposed by the preceding sentence.

(4) Provisions preventing double taxation

(A) Agreements

Paragraph (1) shall not apply to any services which are covered by an agreement under subsection (*l*).

(B) Equivalent foreign taxation

Paragraph (1) shall not apply to any services if the employer establishes to the satisfaction of the Secretary that the remuneration paid by such employer for such services is subject to a tax imposed by a foreign country which is substantially equivalent to the taxes imposed by this chapter.

(5) Cross reference

For relief from taxes in cases covered by certain international agreements, see sections 3101(c) and 3111(c).

(Aug. 16, 1954, ch. 736, 68A Stat. 417; Sept. 1, 1954, ch. 1206, title II, §§204(a), (b), 205(a)–(e), 206(a), 207, 209, 68 Stat. 1091–1094; Aug. 1, 1956, ch. 836, title I, §§103(j), 121(d), title II, §§201(b)–(d), (e)(1), (h)(1), (2), (j)–(*l*), 70 Stat. 824, 839–841, 843; Aug. 1, 1956, ch. 837, title IV, §§410, 411(a), 70 Stat. 878; Pub. L. 85–840, title IV, §§402(b), 404(a), 405(a), (b), Aug. 28, 1958, 72 Stat. 1042, 1044–1046; Pub. L. 85–866, title I, §69, Sept. 2, 1958, 72 Stat. 1659; Pub. L. 86–70, §22(a), June 25, 1959, 73 Stat. 146; Pub. L. 86–168, title I, §104(h), title II, §202(a), Aug. 18, 1959, 73 Stat. 387, 389; Pub. L. 86–624, §18(c), July 12, 1960, 74 Stat. 416; Pub. L. 86–778, title I, §§103(n)–(p), 104(b), 105(a), Sept. 13, 1960, 74 Stat. 938, 939, 942; Pub. L. 87–256, §110(e)(1), Sept. 21, 1961, 75 Stat. 536; Pub. L. 87–293, title II, §202(a)(1), (2), Sept. 22, 1961, 75 Stat. 626; Pub. L. 88–272, title II, §220(c)(2), Feb. 26, 1964, 78 Stat. 62; Pub. L. 88–650, §4(b), Oct. 13, 1964, 78 Stat. 1077; Pub. L. 89–97, title III, §§311(b)(4), (5), 313(c)(3), (4), 316(a)(1), (b), 317(b), 320(b)(2), July 30, 1965, 79 Stat. 381, 383, 386, 388, 393; Pub. L. 90–248, title I, §§108(b)(2), 123(b), title IV, §403(i), title V, §504(a), Jan. 2, 1968, 81 Stat. 835, 845, 932, 934; Pub. L. 91–172, title IX, §943(c)(1)–(3), Dec. 30, 1969, 83 Stat. 728; Pub. L. 92–5, title II, §203(b)(2), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92–336, title II, §203(b)(2), July 1, 1972, 86 Stat. 419; Pub. L. 92–603, title I, §§104(i), 122(b), 123(a)(2), (b), (c)(2), 128(b), 129(a)(2), 138(b), Oct. 30, 1972, 86 Stat. 1341, 1354, 1356, 1358, 1359, 1365; Pub. L. 93–66, title II, §203(b)(2), (d), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, §5(b)(2), (d), Dec. 31, 1973, 87 Stat. 954; Pub. L. 94–455, title XII, §1207(e)(1)(A), title XIX, §§1903(a)(3), 1906(b)(13)(A), (C), Oct. 4, 1976, 90 Stat. 1706, 1807, 1834; Pub. L. 94–563, §1(b), (c), Oct. 19, 1976, 90 Stat. 2655; Pub. L. 95–216, title III, §§312(a), (b), (d), (f), (g), 314(a), 315(a), 356(a)–(d), Dec. 20, 1977, 91 Stat. 1532–1536, 1555; Pub. L. 95–472, §3(b), Oct. 17, 1978, 92 Stat. 1333; Pub. L. 95–600, title I, §164(b)(3), Nov. 6, 1978, 92 Stat. 2814; Pub. L. 96–222, title I, §101(a)(10)(B)(i), Apr. 1, 1980, 94 Stat. 201; Pub. L. 96–499, title XI, §1141(a)(1), Dec. 5, 1980, 94 Stat. 2693; Pub. L. 97–34, title I, §124(e)(2)(A), Aug. 13, 1981, 95 Stat. 200; Pub. L. 97–123, §3(b), Dec. 29, 1981, 95 Stat. 1662; Pub. L. 97–248, title II, §278(a)(1), Sept. 3, 1982, 96 Stat. 559; Pub. L. 98–21, title I, §§101(b), (c)(2), 102(b), title III, §§321(a), (e)(1), 322(a)(2), 323(a)(1), 324(a), 327(a)(1), (b)(1), 328(a), Apr. 20, 1983, 97 Stat. 69, 70, 118, 119, 121, 122, 126–128; Pub. L. 98–369, div. A, title I, §67(c), title IV, §491(d)(36), title V, §531(d)(1)(A), div. B, title VI, §§2601(b), 2603(a)(2), (b), 2661(*o*)(3), 2663(i), (j)(5)(C), July 18, 1984, 98 Stat. 587, 851, 884, 1124, 1128, 1159, 1169, 1171; Pub. L. 99–221, §3(b), Dec. 26, 1985, 99 Stat. 1735; Pub. L. 99–272, title XII, §12112(b), title XIII, §§13205(a)(1), 13303(c)(2), Apr. 7, 1986, 100 Stat. 288, 313, 327; Pub. L. 99–335, title III, §304(b), June 6, 1986, 100 Stat. 606; Pub. L. 99–509, title IX, §9002(b)(1)(A), (2)(A), Oct. 21, 1986, 100 Stat. 1971; Pub. L. 99–514, title I, §122(e)(1), title XI, §§1108(g)(7), 1147(b), 1151(d)(2)(A), title XVIII, §§1882(c), 1883(a)(11)(B), 1895(b)(18)(A), 1899A(38)–(40), Oct. 22, 1986, 100 Stat. 2112, 2435, 2494, 2505, 2915, 2916, 2935, 2960; Pub. L. 100–203, title IX, §§9001(b), 9002(b), 9003(a)(2), 9004(b), 9005(b), 9006(a), (b)(2), 9023(d), Dec. 22, 1987, 101 Stat. 1330–286 to 1330–289, 1330–296; Pub. L. 100–647, title I, §§1001(d)(2)(C)(i), (g)(4)(B)(i), 1011(e)(8), 1011B(a)(22)(A), (23)(A), 1018(r)(2)(A), (u)(35), title III, §3043(c)(2), title VIII, §§8015(b)(2), (c)(2), 8016(a)(3)(A), (4)(A), (C), 8017(b), Nov. 10, 1988, 102 Stat. 3351, 3352, 3461, 3485, 3486, 3586, 3592, 3642, 3791–3793; Pub. L. 101–140, title II, §203(a)(2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title X, §10201(a), (b)(3), Dec. 19, 1989, 103 Stat. 2472; Pub. L. 101–508, title XI, §§11331(a), 11332(b), Nov. 5, 1990, 104 Stat. 1388–467, 1388–469; Pub. L. 101–650, title III, §321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 102–318, title V, §521(b)(34), July 3, 1992, 106 Stat. 312; Pub. L. 102–572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–66, title XIII, §13207(a), Aug. 10, 1993, 107 Stat. 467; Pub. L. 103–178, title II, §204(c), Dec. 3, 1993, 107 Stat. 2033; Pub. L. 103–296, title I, §108(h)(2), title III, §§303(a)(2),

(b)(2), 319(a)(1), (5), 320(a)(1)(C), Aug. 15, 1994, 108 Stat. 1487, 1519, 1533–1535; Pub. L. 103–387, §2(a)(1)(A)–(C), Oct. 22, 1994, 108 Stat. 4071; Pub. L. 104–188, title I, §§1116(a)(1)(A), (B), 1421(b)(8)(A), 1458(b)(1), Aug. 20, 1996, 110 Stat. 1762, 1798, 1819; Pub. L. 105–33, title XI, §11246(b)(2)(A), as added Pub. L. 105–277, div. A, §101(h) [title VIII, §802(a)(2)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–532; Pub. L. 105–61, title VI, §642(d)(2), Oct. 10, 1997, 111 Stat. 1319; Pub. L. 105–206, title VI, §6023(13), July 22, 1998, 112 Stat. 825; Pub. L. 106–554, §1(a)(7) [title III, §319(15)], Dec. 21, 2000, 114 Stat. 2763, 2763A–647; Pub. L. 108–121, title I, §106(b)(2), Nov. 11, 2003, 117 Stat. 1339; Pub. L. 108–203, title IV, §423(a), (c), Mar. 2, 2004, 118 Stat. 536; Pub. L. 108–357, title II, §251(a)(1)(A), title III, §320(b)(1), title VIII, §802(c)(1), Oct. 22, 2004, 118 Stat. 1458, 1473, 1568; Pub. L. 108–375, div. A, title V, §585(b)(2)(B), Oct. 28, 2004, 118 Stat. 1932; Pub. L. 109–280, title VIII, §854(c)(8), Aug. 17, 2006, 120 Stat. 1018; Pub. L. 110–172, §8(a)(2), Dec. 29, 2007, 121 Stat. 2483; Pub. L. 110–245, title I, §115(a)(1), title III, §302(a), June 17, 2008, 122 Stat. 1636, 1647; Pub. L. 110–458, title I, §108(k)(1), Dec. 23, 2008, 122 Stat. 5110.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1), (15), (b), (d)(4), (j)(2)(D), (4)(B), (*l*)(1), (4), (6), (r)(3)(A), (u), (w)(1), and (x), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 201, 210, 215, 218, 223, 230, and 233 of the Act are classified to sections 401, 410, 415, 418, 423, 430, and 433, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(5)(F), is classified to section 1002(2)(B)(ii) of Title 29, Labor.

Section 105(e)(2) of the Indian Self-Determination Act, referred to in subsec. (b)(5)(B)(i)(V), was renumbered section 104(e)(2) of that Act by Pub. L. 100–472, title II, §203(a), Oct. 5, 1988, 102 Stat. 2290, without corresponding amendment to this section. Section 104(e)(2) of the Indian Self-Determination Act is classified to section 450i(e)(2) of Title 25, Indians. Section 105 of that Act is classified to section 450j of Title 25.

Level V of the Executive Schedule, referred to in subsec. (b)(5)(D)(iii), is set out in section 5316 of Title 5, Government Organization and Employees.

Section 301 of the Federal Employees' Retirement System Act of 1986, referred to in subsec. (b)(5)(H)(i), is section 301 of Pub. L. 99–335, which is set out as a note under section 8331 of Title 5, Government Organization and Employees.

The Federal Employees' Retirement System Open Enrollment Act of 1997, referred to in subsec. (b)(5)(H)(i), is section 642 of Pub. L. 105–61, title VI, Oct. 10, 1997, 111 Stat. 1318, which is classified principally to a note under section 8331 of Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Tables.

The Foreign Service Act of 1980, referred to in subsec. (b)(5)(H)(ii), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, as amended. Subchapter II of chapter 8 of title I of the Act is classified generally to part II (§4071 et seq.) of subchapter VIII of chapter 52 of Title 22, Foreign Relations and Intercourse. Section 860 of the Act is classified to section 4071i of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

The Internal Security Act of 1950, as amended, referred to in subsec. (b)(17), is act Sept. 23, 1950, ch. 1024, 64 Stat. 987, as amended, which is classified principally to chapter 23 (§781 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 781 of Title 50 and Tables.

Section 101(a)(15) of the Immigration and Nationality Act, referred to in subsec. (b)(18), (19), is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

Section 15(g) of the Agricultural Marketing Act, referred to in subsec. (g)(3), is classified to section 1141j of Title 12, Banks and Banking.

The Peace Corps Act, referred to in subsecs. (i)(3), (p), is Pub. L. 87–293, title I, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. Sections 5 and 6 of the Peace Corps Act are classified to sections 2504 and 2505 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

Chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (j)(4)(B), was comprised of sections 1400 to 1636 of former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See also section 7851(a)(3) of this title for applicability of chapter 9 of former Title 26. See also section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

The Military Selective Service Act, referred to in subsec. (n)(5)(B), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix, and Tables.

AMENDMENTS

2008—Subsec. (a)(23). Pub. L. 110–245, §115(a)(1), added par. (23).

Subsec. (b)(5)(E). Pub. L. 110–458 struck out ''or special trial judge'' before ''of the United States Tax Court''.

Subsec. (z). Pub. L. 110–245, §302(a), added subsec. (z).

2007—Subsec. (v)(1)(A). Pub. L. 110–172, which directed amendment of subpar. (A) by inserting ''or consisting of designated Roth contributions (as defined in section 402A(c))'' before comma at end, was executed by making the insertion before '', or'', to reflect the probable intent of Congress.

2006—Subsec. (b)(5)(E). Pub. L. 109–280 inserted ''or special trial judge'' before ''of the United States Tax Court''.

2004—Subsec. (a)(7)(B). Pub. L. 108–203, §423(a), substituted ''on a farm operated for profit'' for ''described in subsection (g)(5)''.

Subsec. (a)(18). Pub. L. 108–375 substituted ''134(b)(4), or 134(b)(5)'' for ''or 134(b)(4)''.

Subsec. (a)(20). Pub. L. 108–357, §320(b)(1), inserted ''108(f)(4),'' after ''74(c),''.

Subsec. (a)(22). Pub. L. 108–357, §251(a)(1)(A), added par. (22).

Subsec. (g)(5). Pub. L. 108–203, §423(c), struck out ''or is domestic service in a private home of the employer'' after ''employer's trade or business''.

Subsec. (v)(2)(A). Pub. L. 108–357, §802(c)(1), inserted ''or to any specified stock compensation (as defined in section 4985) on which tax is imposed by section 4985'' before period at end.

2003—Subsec. (a)(18). Pub. L. 108–121 substituted '', 129, or 134(b)(4)'' for ''or 129''.

2000—Subsec. (a)(5)(G). Pub. L. 106–554 substituted a comma for the semicolon at end.

1998—Subsec. (a)(5)(F). Pub. L. 105–206, §6023(13)(A), which directed the substitution of a comma for the semicolon at end of subpar. (F), could not be executed because a semicolon did not appear at end of subpar. (F).

Subsec. (a)(5)(G). Pub. L. 105–206, §6023(13)(B), struck out ''or'' at end.

Subsec. (a)(5)(I). Pub. L. 105–206, § 6023(13)(C), substituted a semicolon for the period at end.

Subsec. (b)(7)(C). Pub. L. 105–277 added Pub. L. 105–33, § 11246(b)(2)(A). See 1997 Amendment note below.

1997—Subsec. (b)(5)(H)(i). Pub. L. 105–61 substituted ''1986,'' for ''1986 or'' and inserted ''or the Federal Employees' Retirement System Open Enrollment Act of 1997'' after ''(50 U.S.C. 2157),''.

Subsec. (b)(7)(C). Pub. L. 105–33, § 11246(b)(2)(A), as added by Pub. L. 105–277, inserted ''(other than the Federal Employees Retirement System provided in chapter 84 of title 5, United States Code)'' after ''law of the United States'' in introductory provisions.

1996—Subsec. (a)(5)(F). Pub. L. 104–188, § 1421(b)(8)(A), struck out ''or'' at end.

Subsec. (a)(5)(G). Pub. L. 104–188, § 1458(b)(1), which directed that subpar. (G) be amended by striking ''(or)'' at the end, could not be executed because ''(or)'' did not appear.

Pub. L. 104–188, § 1421(b)(8)(A), inserted ''or'' at end.

Subsec. (a)(5)(H). Pub. L. 104–188, § 1458(b)(1), inserted ''or'' at end.

Pub. L. 104–188, § 1421(b)(8)(A), added subpar. (H).

Subsec. (a)(5)(I). Pub. L. 104–188, § 1458(b)(1), added subpar. (I).

Subsec. (b). Pub. L. 104–188, § 1116(a)(1)(A), inserted closing provisions ''For purposes of paragraph (20), the operating crew of a boat shall be treated as normally made up of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals.''

Subsec. (b)(20)(A). Pub. L. 104–188, § 1116(a)(1)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''such individual does not receive any cash remuneration (other than as provided in subparagraph (B)),''.

1994—Subsec. (a)(7)(B). Pub. L. 103–387, § 2(a)(1)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''cash remuneration paid by an employer in any calendar quarter to an employee for domestic service in a private home of the employer, if the cash remuneration paid in such quarter by the employer to the employee for such service is less than $50. As used in this subparagraph, the term 'domestic service in a private home of the employer' does not include service described in subsection (g)(5);''.

Subsec. (b)(7)(F)(iv). Pub. L. 103–296, § 303(a)(2), substituted ''$1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 218(c)(8)(B) of the Social Security Act for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year'' for ''$100''.

Subsec. (b)(10)(B). Pub. L. 103–296, § 108(h)(2), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services''.

Subsec. (b)(15). Pub. L. 103–296, § 319(a)(5), inserted '', except service which constitutes 'employment' under subsection (y)'' after ''international organization''.

Subsec. (b)(19). Pub. L. 103–296, § 320(a)(1)(C), substituted ''(J), (M), or (Q)'' for ''(J), or (M)'' in two places.

Subsec. (b)(21). Pub. L. 103–387, § 2(a)(1)(C), added par. (21).

Subsec. (u)(2)(B)(ii)(V). Pub. L. 103–296, § 303(b)(2), substituted ''$1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 218(c)(8)(B) of the Social Security Act for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year'' for ''$100''.

Subsec. (x). Pub. L. 103–387, § 2(a)(1)(B), added subsec. (x).

Subsec. (y). Pub. L. 103–296, § 319(a)(1), added subsec. (y).

1993—Subsec. (a)(1). Pub. L. 103–66, § 13207(a)(1), inserted ''in the case of the taxes imposed by sections 3101(a) and 3111(a)'' after ''(1)'', substituted ''contribution and benefit base (as determined under section 230 of the Social Security Act)'' for ''applicable contribution base (as determined under subsection (x))'' in two places, and substituted ''such contribution and benefit base'' for ''such applicable contribution base''.

Subsec. (b)(5)(H)(i). Pub. L. 103–178 substituted ''section 307 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2157)'' for ''section 307 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees''.

Subsec. (x). Pub. L. 103–66, § 13207(a)(2), struck out subsec. (x) which defined parameters of the applicable contribution base for purposes of this chapter.

1992—Subsec. (b)(5)(E). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

Subsec. (v)(1)(A). Pub. L. 102–318 substituted ''402(e)(3)'' for ''402(a)(8)''.

1990—Subsec. (a)(1). Pub. L. 101–508, § 11331(a)(1), substituted ''applicable contribution base (as determined under subsection (x))'' for ''contribution and benefit base (as determined under section 230 of the Social Security Act)'' wherever appearing and ''such applicable contribution base'' for ''such contribution and benefit base''.

Subsec. (b)(7)(F). Pub. L. 101–508, § 11332(b), added subpar. (F).

Subsec. (x). Pub. L. 101–508, § 11331(a)(2), added subsec. (x).

1989—Subsec. (*l*)(1). Pub. L. 101–239, § 10201(b)(3), substituted ''paragraph (6)'' for ''paragraph (8)'' in introductory provisions.

Subsec. (*l*)(2). Pub. L. 101–239, § 10201(a)(1), inserted at end ''Notwithstanding any other provision of this subsection, the period for which any such agreement is effective with respect to any foreign entity shall terminate at the end of any calendar quarter in which the foreign entity, at any time in such quarter, ceases to be a foreign affiliate as defined in paragraph (6).''

Subsec. (*l*)(3). Pub. L. 101–239, § 10201(a)(2), (3), added par. (3) and struck out former par. (3) relating to termination of period by American employer.

Subsec. (*l*)(4). Pub. L. 101–239, § 10201(a)(2), (4), redesignated par. (6) as (4) and struck out former par. (4) relating to termination of period by Secretary.

Subsec. (*l*)(5). Pub. L. 101–239, § 10201(a)(2), (4), redesignated par. (7) as (5) and struck out former par. (5) relating to no renewal of agreement.

Subsec. (*l*)(6) to (10). Pub. L. 101–239, § 10201(a)(4), redesignated pars. (6) to (10) as (4) to (8), respectively.

Subsec. (x). Pub. L. 101–140 amended this section to read as if amendments by Pub. L. 100–647, § 1011B(a)(22)(A), had not been enacted, see 1988 Amendment note below.

1988—Subsec. (a)(5)(G). Pub. L. 100–647, § 1011B(a)(23)(A), inserted ''if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received'' after ''section 125)''.

Subsec. (a)(8)(B). Pub. L. 100–647, § 8017(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless (i) the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or (ii) the employer's expenditures for agricultural labor in such year equal or exceed $2,500;''.

Subsec. (a)(11). Pub. L. 100–647, § 1001(g)(4)(B)(i), inserted ''(determined without regard to section 274(n))'' after ''section 217''.

Subsec. (a)(21). Pub. L. 100–647, § 3043(c)(2), added par. (21).

Subsec. (b)(5). Pub. L. 100–647, § 8015(c)(2), inserted ''any such service performed on or after any date on

which such individual performs'' after ''with respect to'' in provision preceding subpar. (C).

Subsec. (b)(5)(H). Pub. L. 100–647, §8015(b)(2), amended subpar. (H) generally. Prior to amendment, subparagraph (H) read as follows: ''service performed by an individual on or after the effective date of an election by such individual under section 301(a) of the Federal Employees' Retirement System Act of 1986, or under regulations issued under section 860 of the Foreign Service Act of 1980 or section 307 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, to become subject to chapter 84 of title 5, United States Code;''.

Subsec. (b)(19). Pub. L. 100–647, §1001(d)(2)(C)(i), substituted ''(F), (J), or (M)'' for ''(F) or (J)'' in two places.

Subsec. (b)(20). Pub. L. 100–647, §8016(a)(4)(A), (C), made technical correction to directory language of Pub. L. 99–272, §13303(c)(2), see 1986 Amendment note below.

Subsec. (d)(3), (4). Pub. L. 100–647, §8016(a)(3)(A), redesignated par. (4) as (3) and substituted ''; or'' for a period at the end, and redesignated par. (3) as (4), substituted a period for ''; or'' at the end, and moved redesignated par. (4) to the end of the subsection.

Subsec. (u)(2)(B)(ii)(VI). Pub. L. 100–647, §1018(r)(2)(A), added subcl. (VI).

Subsec. (v)(3)(A). Pub. L. 100–647, §1011(e)(8), substituted ''457(f)(1)'' for ''457(e)(1)''.

Subsec. (v)(3)(C). Pub. L. 100–647, §1018(u)(35), substituted ''Savings'' for ''Saving''.

Subsec. (x). Pub. L. 100–647, §1011B(a)(22)(A), added subsec. (x) relating to benefits provided under certain employee benefit plans.

1987—Subsec. (a)(2)(C). Pub. L. 100–203, §9003(a)(2), substituted ''death, except that this paragraph does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee'' for ''death''.

Subsec. (a)(5)(F). Pub. L. 100–203, §9023(d)(1), substituted a comma for semicolon before ''or'' at end.

Subsec. (a)(5)(G). Pub. L. 100–203, §9023(d)(2), substituted a semicolon for comma at end.

Subsec. (a)(8)(B)(ii). Pub. L. 100–203, §9002(b), added cl. (ii) and struck out former cl. (ii) which read as follows: ''the employee performs agricultural labor for the employer on 20 days or more during such year for cash remuneration computed on a time basis;''.

Subsec. (b)(3)(A). Pub. L. 100–203, §9005(b)(1), substituted ''18'' for ''21''.

Pub. L. 100–203, §9004(b)(1), struck out ''performed by an individual in the employ of his spouse, and service'' after ''service''.

Subsec. (b)(3)(B). Pub. L. 100–203, §9005(b)(2), inserted ''under the age of 21 in the employ of his father or mother, or performed by an individual'' after first reference to ''individual''.

Pub. L. 100–203, §9004(b)(2), inserted introductory provisions and struck out former introductory provisions which read as follows: ''service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service if—''.

Subsec. (i)(2). Pub. L. 100–203, §9001(b)(2), substituted ''only (A) his basic pay as described in chapter 3 and section 1009 of title 37, United States Code, in the case of an individual performing service to which subparagraph (A) of such subsection (m)(1) applies, or (B) his compensation for such service as determined under section 206(a) of title 37, United States Code, in the case of an individual performing service to which subparagraph (B) of such subsection (m)(1) applies.'' for ''only his basic pay as described in chapter 3 and section 1009 of title 37, United States Code.''

Subsec. (m)(1). Pub. L. 100–203, §9001(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'employment' shall, notwithstanding the provisions of subsection (b) of this section, include service performed by an individual as a member of a uniformed service on active duty; but such term shall not include any such service which is performed while on leave without pay.''

Subsec. (q). Pub. L. 100–203, §9006(a), in heading substituted ''both employee and employer taxes'' for ''employee taxes'', and in text struck out ''other than for purposes of the taxes imposed by section 3111'' after ''of this chapter'', substituted ''remuneration for such employment (and deemed to have been paid by the employer for purposes of subsections (a) and (b) of section 3111)'' for ''remuneration for employment'', and inserted before period at end ''; except that, in determining the employer's liability in connection with the taxes imposed by section 3111 with respect to such tips in any case where no statement including such tips was so furnished (or to the extent that the statement so furnished was inaccurate or incomplete), such remuneration shall be deemed for purposes of subtitle F to be paid on the date on which notice and demand for such taxes is made to the employer by the Secretary''.

Subsec. (t). Pub. L. 100–203, §9006(b)(2), struck out subsec. (t) which related to special rule for determining wages subject to employer tax in case of certain employers whose employees receive income from tips.

1986—Subsec. (a)(5)(C). Pub. L. 99–514, §1108(g)(7), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''under a simplified employee pension if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2) for such payment,''.

Subsec. (a)(5)(G). Pub. L. 99–514, §1151(d)(2)(A), added subpar. (G).

Subsec. (a)(8). Pub. L. 99–514, §1883(a)(11)(B), realigned margin of subpar. (B).

Subsec. (a)(20). Pub. L. 99–514, §122(e)(1), inserted reference to section 74(c).

Subsec. (b)(5)(H). Pub. L. 99–335 added subpar. (H).

Subsec. (b)(7)(E). Pub. L. 99–509, §9002(b)(1)(A), added subpar. (E).

Subsec. (b)(20). Pub. L. 99–272, §13303(c)(2), as amended by Pub. L. 100–647, §8016(a)(4)(A), (C), inserted ''(other than service described in paragraph (3)(A))'' after ''service''.

Subsec. (d)(3), (4). Pub. L. 99–509, §9002(b)(2)(A), added par. (3) and redesignated former par. (3) as (4).

Subsec. (i)(5). Pub. L. 99–272, §12112(b), substituted ''shall not include'' for ''shall, subject to the provisions of subsection (a)(1) of this section, include''.

Subsec. (u). Pub. L. 99–272, §13205(a)(1), amended subsec. (u) generally, substantially expanding and revising its provisions by extending the application of hospital insurance tax to State and local employment.

Subsec. (u)(2)(B)(ii)(V). Pub. L. 99–514, §1895(b)(18)(A), added subcl. (V).

Subsec. (v)(2)(A)(ii). Pub. L. 99–514, §1899A(38), substituted ''forfeiture'' for ''forefeiture''.

Subsec. (v)(3)(C). Pub. L. 99–514, §1147(b), added subpar. (C).

Subsec. (w)(1). Pub. L. 99–514, §1899A(39), substituted ''this chapter'' for ''chapter 21 of this Code'' in first sentence.

Subsec. (w)(2). Pub. L. 99–514, §1882(c), substituted last three sentences for former last two sentences which read as follows: ''The election may not be revoked by the church or organization, but shall be permanently revoked by the Secretary if such church or organization fails to furnish the information required under section 6051 to the Secretary for a period of 2 years or more with respect to remuneration paid for such services by such church or organization, and, upon request by the Secretary, fails to furnish all such previously unfurnished information for the period covered by the election. Such revocation shall apply retroactively to the beginning of the 2-year period for which the information was not furnished.''

Pub. L. 99–514, §1899A(40), substituted ''July 18, 1984'' for ''the date of the enactment of this subsection'' in first sentence.

1985—Subsec. (b)(5)(B)(i)(V). Pub. L. 99–221 added subcl. (V).

1984—Subsec. (a). Pub. L. 98–369, § 531(d)(1)(A)(i), inserted ''(including benefits)'' before ''paid in any medium'' in introductory provisions.

Subsec. (a)(5)(C) to (G). Pub. L. 98–369, § 491(d)(36), struck out subpar. (C) which provided: ''under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a),'' and redesignated subpars, (D) to (G) as (C) to (F), respectively.

Subsec. (a)(20). Pub. L. 98–369, § 531(d)(1)(A)(ii), added par. (20).

Subsec. (b)(1). Pub. L. 98–369, § 2663(i)(1), struck out ''(A) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended (7 U.S.C. 1461–1468), or (B)''.

Subsec. (b)(5)(B). Pub. L. 98–369, § 2601(b)(1), in amending subpar. (B) generally, substituted provision broadening social security coverage for newly hired Federal civilian employees effective with remuneration paid after Dec. 31, 1983, by providing that persons transferring from other government service to civilian service be covered under social security, unless the other service was in an international organization, or the person is returning to civilian service after temporary military or reserve duty and is exercising his reemployment rights under chapter 43 of title 38.

Subsec. (b)(5)(C) to (G). Pub. L. 98–369, § 2601(b)(2), substituted subpar. designations (C) to (G) for former designations (i) to (v), respectively, in subpar. (D), as so redesignated, redesignated cls. (I) to (III) as (i) to (iii), respectively, and amended generally, subpar. (G), as so redesignated, designating provision relating to service performed by an individual who is not subject to subchapter III of chapter 83 of title 5 as cl. (i), and in cl. (i) as so designated, inserting reference to another retirement system established by a law of the United States for Federal employees, other than for members of the uniformed services and adding cls. (ii) and (iii), and provision for determining for purposes of this subparagraph whether an individual is subject to subchapter III of chapter 83 of title 5 or any other retirement system.

Subsec. (b)(8). Pub. L. 98–369, § 2603(a)(2), designated existing provisions as subpar. (A), substituted ''this subparagraph'' for ''this paragraph'', and added subpar. (B).

Subsec. (b)(10)(B). Pub. L. 98–369, § 2663(j)(5)(C), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (i)(2). Pub. L. 98–369, § 2663(i)(2), substituted ''chapter 3 and section 1009 of title 37, United States Code'' for ''section 102(10) of the Servicemen's and Veterans' Survivor Benefits Act''.

Subsec. (m)(2). Pub. L. 98–369, § 2663(i)(3), substituted ''paragraph (21) of section 101 of title 38, United States Code'' for ''section 102 of the Servicemen's and Veterans' Survivor Benefits Act'' and ''paragraph (22) of such section'' for ''such section''.

Subsec. (m)(3). Pub. L. 98–369, § 2663(i)(4), substituted ''paragraph (23) of such section 101'' for ''such section 102''.

Subsec. (n). Pub. L. 98–369, § 2663(i)(5), in provision preceding par. (1) substituted ''a reserve component as defined in section 101(27) of title 38, United States Code'' for ''a reserve component of a uniformed service as defined in section 102(3) of the Servicemen's and Veterans' Survivor Benefits Act'', and inserted '', the National Oceanic and Atmospheric Administration Corps,''.

Subsec. (n)(5). Pub. L. 98–369, § 2663(i)(5)(C), substituted ''military, naval, or air'' for ''military or naval'' in two places.

Subsec. (n)(5)(B). Pub. L. 98–369, § 2663(i)(5)(D), substituted ''Military Selective Service Act'' for ''Universal Military Training and Service Act''.

Subsec. (v)(1)(B). Pub. L. 98–369, § 2661(*o*)(3), substituted ''section 414(h)(2) where the pick up referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise)'' for ''section 414(h)(2)''.

Subsec. (v)(2)(A). Pub. L. 98–369, § 67(c), inserted provision that the preceding sentence shall not apply to any excess parachute payment (as defined in section 2801G(b)).

Subsec. (w). Pub. L. 98–369, § 2603(b), added subsec. (w).

1983—Subsec. (a). Pub. L. 98–21, § 327(b)(1), inserted in text following last numbered paragraph a provision that nothing in the regulations prescribed for purposes of chapter 24 (relating to income tax withholding) which provides an exclusion from ''wages'' as used in such chapter shall be construed to require a similar exclusion from ''wages'' in regulations prescribed for purposes of this chapter.

Pub. L. 98–21, § 324(a)(3)(D), substituted reference to subpar. (A) of par. (2) for reference to subpar. (B) thereof in text following last numbered paragraph.

Subsec. (a)(2). Pub. L. 98–21, § 324(a)(3)(A), struck out ''(A) retirement, or'', and redesignated subpars. (B) to (D) as (A) to (C), respectively.

Subsec. (a)(3). Pub. L. 98–21, § 324(a)(3)(B), struck out par. (3) which related to any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement.

Subsec. (a)(5)(D). Pub. L. 98–21, § 328(a), substituted ''section 219(b)(2)'' for ''section 219''.

Subsec. (a)(5)(E) to (G). Pub. L. 98–21, § 324(a)(2), added subpars. (E) to (G).

Subsec. (a)(9). Pub. L. 98–21, § 324(a)(3)(B), struck out par. (9) which related to any payment (other than vacation or sick pay) made to an employee after the month in which he attained age 62, if such employee did not work for the employer in the period for which such payment was made.

Subsec. (a)(13)(A)(iii). Pub. L. 98–21, § 324(a)(3)(C), struck out cl. (iii) which related to the case of retirement after attaining an age specified in the plan referred to in subparagraph (B) or in a pension plan of the employer.

Subsec. (a)(19). Pub. L. 98–21, § 327(a)(1), added par. (19).

Subsec. (b). Pub. L. 98–21, § 323(a)(1), substituted ''a citizen or resident of the United States'' for ''a citizen of the United States'' in text preceding par. (1).

Pub. L. 98–21, § 322(a)(2), added cl. (C) in text preceding par. (1).

Subsec. (b)(5). Pub. L. 98–21, § 101(b)(1), amended par. (5) generally. Prior to amendment par. (5) read as follows: ''Service performed in the employ of any instrumentality of the United States, if such instrumentality is exempt from the tax imposed by section 3111 by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;''.

Subsec. (b)(6). Pub. L. 98–21, § 101(b)(1), amended par. (6) generally. Prior to amendment par. (6) read as follows:

''(A) service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by a law of the United States;

''(B) service performed, by an individual in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939 on December 31, 1950, and if such service is covered by a retirement system established by such instrumentality; except that the provisions of this subparagraph shall not be applicable to—

''(i) service performed in the employ of a corporation which is wholly owned by the United States;

''(ii) service performed in the employ of a Federal land bank, a Federal intermediate credit bank, a bank for cooperatives, a Federal land bank association, a production credit association, a Federal Reserve Bank, a Federal Home Loan Bank, or a Federal Credit Union;

''(iii) service performed in the employ of a State, county, or community committee under the Commodity Stabilization Service;

''(iv) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; or

''(v) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Transportation, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard;

''(C) service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is performed—

''(i) as the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner of or to the Congress;

''(ii) in the legislative branch;

''(iii) in a penal institution of the United States by an inmate thereof;

''(iv) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training;

''(v) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency; or

''(vi) by any individual to whom subchapter III of chapter 83 of title 5, United States Code, does not apply because such individual is subject to another retirement system (other than the retirement system of the Tennessee Valley Authority);''.

Subsec. (b)(8). Pub. L. 98–21, §102(b)(1), struck out the subpar. (A) designation preceding ''service performed'', struck out subpar. (B) which related to service performed by employees of nonprofit organizations, and in par. (8), as so designated substituted ''except that this paragraph shall not apply'' for ''except that this subparagraph shall not apply''.

Subsec. (i)(5). Pub. L. 98–21, §101(c)(2), added par. (5).

Subsec. (k). Pub. L. 98–21, §102(b)(2), struck out subsec. (k) which related to exemption of religious, charitable and certain other organizations.

Subsec. (*l*). Pub. L. 98–21, §321(a)(1), substituted ''Agreements entered into by American employers with respect to foreign affiliates'' for ''Agreements entered into by domestic corporations with respect to foreign subsidiaries'' in heading.

Subsec. (*l*)(1). Pub. L. 98–21, §321(a)(1), substituted ''affiliates'' for ''subsidiaries'' in par. (1) heading, and in first sentence of provisions preceding subpar. (A), substituted ''at the American employer's request'' for ''at the request of any domestic corporation'', ''any American employer (as defined in subsection (h)) who'' for ''any such corporation which'', ''such manner and form'' for ''such form and manner'', and ''affiliates'' for ''subsidiaries'' after ''such employer's foreign'', and inserted ''or residents'' after ''citizens''.

Pub. L. 98–21, §321(e)(1), substituted ''American employer'' for ''domestic corporation'', ''affiliate'' for ''subsidiary'' and ''citizens or residents'' for ''citizens'' wherever appearing in second and third sentences of provisions preceding subpar. (A) and substituted ''American employer'' for ''domestic corporation'' in subpars. (A) and (B).

Subsec. (*l*)(2) to (5). Pub. L. 98–21, §321(e)(1), substituted, wherever appearing, ''American employer'' for ''domestic corporation'', ''American employers'' for ''domestic corporations'', ''affiliate'' for ''subsidiary'', ''affiliates'' for ''subsidiaries'', ''foreign entity'' for ''foreign corporation'', ''foreign entities'' for ''foreign corporations'', and ''citizens or residents'' for ''citizens''.

Subsec. (*l*)(8). Pub. L. 98–21, §321(a)(2), amended par. (8) generally, substituting provision defining a foreign affiliate for provision defining a foreign subsidiary of a domestic corporation which, for the purposes of this subsection and section 210(a) of the Social Security Act, had been defined as a foreign corporation not less than 20 percent of the voting stock of which was owned by such domestic corporation, or a foreign corporation more than 50 percent of the voting stock of which was owned by the foreign corporation described above.

Subsec. (*l*)(9), (10). Pub. L. 98–21, §321(e)(1), substituted, wherever appearing, ''American employer'' for ''domestic corporation'', ''American employers'' for ''domestic corporations'', and ''foreign entities'' for ''foreign corporations''.

Subsec. (r)(3)(A). Pub. L. 98–21, §102(b)(3)(A), substituted ''subsection (b)(8)'' and ''section 210(a)(8)'' for ''subsection (b)(8)(A)'' and ''section 210(a)(8)(A)'', respectively, in provisions preceding cl. (i).

Subsec. (r)(4). Pub. L. 98–21, §102(b)(3)(B), struck out par. (4) which related to coordination with coverage of lay employees.

Subsec. (u)(1). Pub. L. 98–21, §101(b)(2), substituted ''sections 3101(b) and 3111(b), subsection (b) shall be applied without regard to paragraph (5) thereof'' for ''sections 3101(b) and 3111(b)—

''(A) paragraph (6) of subsection (b) shall be applied without regard to subparagraphs (A), (B), and (C)(i), (ii), and (vi) thereof, and

''(B) paragraph (5) of subsection (b) (and the provisions of law referred to therein) shall not apply''.

Subsec. (v). Pub. L. 98–21, §324(a)(1), added subsec. (v).

1982—Subsec. (u). Pub. L. 97–248 added subsec. (u).

1981—Subsec. (a). Pub. L. 97–123 inserted ''(but, in the case of payments made to an employee or any of his dependents this subparagraph shall exclude from the term 'wages' only payments which are received under a workmen's compensation law)'' after ''sickness or accident disability'' in par. (2)(B), and inserted, after par. (18), the following provision: ''Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of the parenthetical matter contained in subparagraph (B) of paragraph (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages.''

Subsec. (a)(18). Pub. L. 97–34 substituted ''section 127 or 129'' for ''section 127''.

1980—Subsec. (a)(5)(D). Pub. L. 96–222 added subpar. (D).

Subsec. (a)(6). Pub. L. 96–499 struck out ''(or the corresponding section of prior law)'' after ''section 3101'' in subpar. (A) and inserted ''with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor'' after subpar. (B).

1978—Subsec. (a)(17). Pub. L. 95–472 added par. (17).

Subsec. (a)(18). Pub. L. 95–600 added par. (18).

1977—Subsec. (a)(7)(C), (10). Pub. L. 95–216, §356(a), substituted ''year'' for ''quarter'' and ''$100'' for ''$50'', wherever appearing.

Subsec. (a)(16). Pub. L. 95–216, §356(b), added par. (16).

Subsec. (b)(10). Pub. L. 95–216, §356(c), struck out subpar. (A) which related to service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a) or under section 521, if the remuneration for such service was less than $50, struck out the designation ''(B)'' preceding the remainder of par. (10), and redesignated former cls. (i) and (ii) of former subpar. (B) as subpars. (A) and (B).

Subsecs. (b)(17)(A), (g)(4)(B). Pub. L. 95–216, §356(d), substituted ''year'' for ''quarter''.

Subsec. (k)(4)(A). Pub. L. 95–216, §312(b)(2), (f), substituted ''(or, if later, as of the earliest date on which it satisfies clause (ii) of this subparagraph)'' for ''or

any subsequent date'' in cl. (i) and, in provisions following cl. (ii), inserted ''(subject to subparagraph (C))'' after ''effective''.

Subsec. (k)(4)(B)(ii). Pub. L. 95–216, § 312(b)(4), substituted ''first day of the calendar quarter'' for ''date''.

Subsec. (k)(4)(B)(iii). Pub. L. 95–216, § 312(g), added cl. (iii).

Subsec. (k)(4)(C). Pub. L. 95–216, § 312(b)(1), added subpar. (C).

Subsec. (k)(5). Pub. L. 95–216, § 312(a)(1), substituted ''prior to April 1, 1978,'' for ''prior to the expiration of 180 days after the date of the enactment of this paragraph,'' in subpar. (B), and, in provisions following subpar. (B), substituted ''April 1, 1978'' for ''the 181st day after the date of enactment of this paragraph'' and substituted ''April 1, 1978,'' for ''such 181st day''.

Subsec. (k)(6). Pub. L. 95–216, § 312(b)(3), inserted ''(except as provided in paragraph (4)(C))'' after ''services involved'' in introductory provisions.

Subsec. (k)(7). Pub. L. 95–216, § 312(a)(2), substituted ''prior to April 1, 1978,'' for ''prior to the expiration of 180 days after the date of the enactment of this paragraph'', ''April 1, 1978,'' for ''the 181st day after such date,'' and ''prior to that date'' for ''prior to the first day of the calendar quarter in which such 181st day occurs''.

Subsec. (k)(8). Pub. L. 95–216, § 312(a)(3), (d), amended par. (8) first by substituting ''prior to April 1, 1978,'' for ''by the end of the 180-day period following the date of the enactment of this paragraph'', ''prior to April 1, 1978'' for ''within that period'', and ''on that date'' for ''on the 181st day following that date'', and then further amending par. (8) as so amended by dividing the existing provisions into introductory provisions, subpar. (B), and closing provisions, inserting subpars. (A) and (C), substituting ''by March 31, 1978'' for ''prior to April 1, 1978'', ''by that date'' for ''prior to April 1, 1978'', and ''on April 1, 1978'' for ''on that date'' in subpar. (B) as so redesignated, and, in closing provisions, inserting '', or with respect to service constituting employment by reason of such request,'' after ''in which the date of such filing or constructive filing occurs''.

Subsec. (s). Pub. L. 95–216, § 314(a), added subsec. (s).

Subsec. (t). Pub. L. 95–216, § 315(a), added subsec. (t).

1976—Subsec. (b). Pub. L. 94–455, § 1903(a)(3)(A), substituted '', of whatever nature, performed'' for ''performed after 1936 and prior to 1955 which was employment for purposes of subchapter A of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1954'' in introductory text.

Subsec. (b)(1). Pub. L. 94–455, § 1903(a)(3)(B), struck out ''65 Stat. 119;'' before ''7 U.S.C. 1461–1468''.

Subsec. (b)(6)(B)(v). Pub. L. 94–455, § 1903(a)(3)(C), substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

Subsec. (b)(8)(B). Pub. L. 94–563, § 1(b), inserted ''or deemed to have been so filed under paragraph (4) or (5) of such subsection'' after ''filed pursuant to subsection (k) (or the corresponding subsection of prior law)'' in provisions preceding cl. (i), inserted ''(or deemed to have been filed)'' after ''filed'' in cls. (i), (ii), and (iii), and substituted ''is (or is deemed to be) in effect'' for ''is in effect'' in provisions following cl. (iii).

Subsec. (b)(12)(B). Pub. L. 94–455, § 1906(b)(13)(C), substituted ''to the Secretary of the Treasury'' for ''to the Secretary''.

Subsec. (b)(20). Pub. L. 94–455, § 1207(e)(1)(A), added par. (20).

Subsec. (g)(3). Pub. L. 94–455, § 1903(a)(3)(D), struck out ''46 Stat. 1550, § 3;'' before ''12 U.S.C. 1141j''.

Subsec. (k)(1). Pub. L. 94–455, § 1903(a)(3)(E), redesignated subpar. (G) as (F). Former subpars. (F) and (H), which related to the right of an organization to request before 1960 to have a certificate effective where such certificate was filed after 1955 but prior to the enactment of this subparagraph and the right of an organization to amend a certificate filed before 1966 to make such certificate effective for an earlier date than had been originally established, respectively, were struck out.

Subsec. (k)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (k)(4) to (8). Pub. L. 94–563, § 1(c), added pars. (4) to (8).

Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (*l*)(1). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (*l*)(2). Pub. L. 94–455, § 1903(a)(3)(F), struck out '', but in no case prior to January 1, 1955'' after ''specified in the agreement''.

Subsec. (*l*)(4) to (7), (10). Pub. L. 94–455, § 1906(b)(13)(a), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (m)(1). Pub. L. 94–455, § 1903(a)(3)(G), struck out ''after December 1956'' after ''include service performed''.

1973—Subsec. (a)(1). Pub. L. 93–233, § 5(b)(2), effective with respect to remuneration paid after 1973, substituted ''$13,200'' for ''$12,600'' in two places.

Pub. L. 93–233, § 5(d), applicable only with respect to remuneration paid after 1973 (as provided in section 5(e) of Pub. L. 93–233, set out as a note under section 409 of Title 42), amended section 203(b)(2)(C) of the Pub. L. 92–336 (set out as 1973 Amendment note hereunder) substituting ''$13,200'' for ''$12,600''.

Pub. L. 93–66, § 203(b)(2), effective with respect to remuneration paid after 1973, substituted ''$12,600'' for ''$12,000'' in two places.

Pub. L. 93–66, § 203(d), applicable only with respect to remuneration paid after, and taxable years beginning after, 1973 (as provided in section 203(e) of Pub. L. 93–66, set out as a note under section 409 of Title 42), amended section 203(b)(2)(C) of Pub. L. 92–336 (set out as 1972 Amendment note hereunder) substituting ''$12,600'' for ''$12,000''.

1972—Subsec. (a)(1). Pub. L. 92–336, § 203(b)(2)(A), substituted ''$10,800'' for ''$9,000'' in two places.

Pub. L. 92–336, § 203(b)(2)(B), effective with respect to remuneration paid after 1973, substituted ''$12,000'' for ''$10,800'' in two places.

Pub. L. 92–336, § 203(b)(2)(C), effective with respect to remuneration paid after 1974, substituted ''the contribution and benefit base (as determined under section 230 of the Social Security Act)'' for ''$12,000'' in two places, and ''the calendar year with respect to which such contribution and benefit base is effective'' for ''any calendar year''.

Subsec. (a)(9). Pub. L. 92–603, § 104(i), substituted uniform provision of 62 years of age, for separate provisions for men and women of 65 and 62 years, respectively.

Subsec. (a)(14). Pub. L. 92–603, § 122(b), added par. (14).

Subsec. (a)(15). Pub. L. 92–603, § 138(b), added par. (15).

Subsec. (b)(7)(D). Pub. L. 92–603, § 128(b), added subpar. (D).

Subsec. (b)(8)(A). Pub. L. 92–603, § 123(a)(2), inserted provision that this subparagraph shall not apply to service performed by a member of such religious order in the exercise of such duties if an election of coverage under subsec. (r) is in effect with respect to such order, or with respect to the autonomous subdivision thereof to which such member belongs.

Subsec. (b)(10)(B). Pub. L. 92–603, § 129(a)(2), inserted provisions relating to service performed in the employ of organizations described in section 509(a)(3) of this title.

Subsec. (i)(4). Pub. L. 92–603, § 123(c)(2), added par. (4).

Subsec. (r). Pub. L. 92–603, § 123(b), added subsec. (r).

1971—Subsec. (a)(1). Pub. L. 92–5 substituted ''$9,000'' for ''$7,800'' in two places.

1969—Subsec. (k)(1)(F)(i), (G)(i), (H)(i). Pub. L. 91–172, § 943(c)(1)–(3), inserted ''or pay tax'' after ''tax return''.

1968—Subsec. (a)(1). Pub. L. 90–248, § 108(b)(2), substituted ''$7,800'' for ''$6,600'' wherever appearing.

Subsec. (a)(13). Pub. L. 90–248, § 504(a), added par. (13).

Subsec. (b)(3)(B). Pub. L. 90–248, § 123(b), provided for inclusion of family employment in a private home in

definition of ''employment,'' upon compliance with conditions described in cls. (i) to (iii).

Subsec. (b)(6)(C)(iv). Pub. L. 90–248, §403(i)(1), substituted ''section 5351(2) of title 5, United States Code'' for ''section 2 of the Act of August 4, 1967'' and struck out ''; 5 U.S.C., sec. 1052'' at end of parenthetical text.

Subsec. (b)(6)(C)(vi). Pub. L. 90–248, §403(i)(2), substituted ''subchapter III of chapter 83 of title 5, United States Code,'' for ''the Civil Service Retirement Act''.

Subsec. (b)(7)(C)(ii). Pub. L. 90–248, §403(i)(3), substituted ''section 5351(2) of title 5, United States Code'' for ''section 2 of the Act of August 4, 1947'' and struck out ''; 5 U.S.C. 1052'' at end of parenthetical text.

1965—Subsec. (a)(1). Pub. L. 89–97, §320(b)(2), substituted ''$6,600'' for ''$4,800'' wherever appearing.

Subsec. (a)(12). Pub. L. 89–97, §313(c)(3), added par. (12).

Subsec. (b)(6)(C)(iv). Pub. L. 89–97, §311(b)(4), inserted '', other than as a medical or dental intern or a medical or dental resident in training''.

Subsec. (b)(7)(C). Pub. L. 89–97, §317(b)(3), added subpar. (C).

Subsec. (b)(13). Pub. L. 89–97, §311(b)(5), struck out from the definition of employment the exclusion of service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law.

Subsec. (k)(1)(B)(iii). Pub. L. 89–97, §316(a)(1), substituted ''such date may not be earlier than the first day of the twentieth'' for '', in the case of a certificate filed prior to January 1, 1960, such date may not be earlier than January 1, 1956, and in the case of a certificate filed after 1959, such date may not be earlier than the first day of the fourth''.

Subsec. (k)(1)(H). Pub. L. 89–97, §316(b), added subpar. (H).

Subsec. (q). Pub. L. 89–97, §313(c)(4), added subsec. (q).

1964—Subsec. (a)(11). Pub. L. 88–650 added par. (11).

Pub. L. 88–272 substituted ''is a plan described in section 403(a), or'' for ''meets the requirements of section 401(a)(3), (4), (5), and (6)'' in subpar. (5)(B), and added subpar. (5)(C).

1961—Subsec. (b)(19). Pub. L. 87–256 added par. (19).

Subsec. (i)(3). Pub. L. 87–293, §202(a)(1), added par. (3).

Subsec. (p). Pub. L. 87–293, §202(a)(2), added subsec. (p).

1960—Subsec. (b)(3). Pub. L. 86–778, §104(b), designated existing provisions as cl. (A) and struck out provisions which related to service performed by an individual in the employ of his son or daughter, and added cl. (B).

Subsec. (b)(7). Pub. L. 86–778, §103(n), excluded service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby.

Subsec. (b)(18). Pub. L. 86–778, §103(*o*), added par. (18).

Subsec. (e). Pub. L. 86–778, §103(p), struck out a reference to Hawaii in cl. (1), and included Guam and American Samoa and cls. (1) and (2).

Pub. L. 86–624 struck out ''Hawaii,'' before ''the District of Columbia'', in cl. (1).

Subsec. (k)(1)(A). Pub. L. 86–778, §105(a)(1), (2), struck out ''and that at least two-thirds of its employees concur in the filing of the certificate'' after ''extended to service performed by its employees'', and substituted ''of each employee (if any) who concurs'' for ''of each employee who concurs''.

Subsec. (k)(1)(E). Pub. L. 86–778, §105(a)(3), substituted ''in either group, or may file a separate certificate pursuant to such subparagraph with respect to the employees in each group'' for ''in one of the groups if at least two-thirds of the employees in such group concur in the filing of the certificate. The organization may also file such a certificate with respect to the employees in the other group if at least two-thirds of the employees in such other group concur in the filing of such certificate.''

1959—Subsec. (b)(6)(B)(ii). Pub. L. 86–168 substituted ''Federal land bank association'' for ''national farm loan association'', and included service in the employ of Federal land banks, Federal intermediate credit banks and banks for cooperatives.

Subsec. (e). Pub. L. 86–70 struck out ''Alaska,'' before ''Hawaii''.

1958—Subsec. (a)(1). Pub. L. 85–840, §402(b), substituted ''$4,800'' for ''$4,200'' wherever appearing.

Subsec. (b)(1). Pub. L. 85–840, §404(a), struck out provisions which excluded from definition of ''employment'' service performed in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 1141j of title 12.

Subsec. (b)(8)(B). Pub. L. 85–840, §405(b), made subparagraph inapplicable to service performed during the period for which a certificate is in effect if such service is performed by an employee who, after the calendar quarter in which the certificate was filed with respect to a group described in section 321(k)(1)(E) of this title, became a member of such group, and made subparagraph applicable with respect to service performed by an employee as a member of a group described in section 3121(k)(1)(E) of this title with respect to which no certificate is in effect.

Subsec. (k)(1). Pub. L. 85–840, §405(a), permitted amendment of the list at any time prior to the expiration of the twenty-fourth month following the calendar quarter in which the certificate is filed, allowed an organization to provide that the certificate shall be in effect for the period beginning with the first day of any calendar quarter preceding the calendar quarter in which the certificate is filed, except that, in the case of a certificate filed prior to Jan. 1, 1960, such date may not be earlier than Jan. 1, 1956, and in the case of a certificate filed after 1959, such date may not be earlier than the first day of the fourth calendar quarter preceding the quarter in which such certificate is first made the certificate effective in the case of services performed by an employee whose name appears on a supplemental list only with respect to service performed by the employee for the period beginning with the first day of the calendar quarter in which the supplemental list is filed, required organizations described in subpar. (A) which employ both individuals who are in positions covered by a pension, annuity, retirement, or similar fund or system established by a State or political subdivision thereof and individuals who are not in such positions, to divide their employees into two separate groups, authorized the filing of requests by organizations which filed certificates after 1955 but prior to Aug. 28, 1958, to have such certificates effective, with respect to services of certain individuals, for the period beginning with the first day of any calendar quarter preceding the first calendar quarter for which they are effective and following the last calendar quarter of 1955, and provided for the due date and payment of tax for certain calendar quarters and for the expiration of the statutory period of assessment.

Subsec. (*l*)(3). Pub. L. 85–866 substituted ''by'' for ''be'' in heading.

1956—Subsec. (a)(8)(B). Act Aug. 1, 1956, ch. 836, §201(h)(1), included within definition of wages cash remuneration of $150 or more, and cash remuneration computed on a time basis where the employee performs agricultural labor for the employer on 20 days or more during the calendar year.

Subsec. (a)(9). Act Aug. 1, 1956, ch. 836, §201(b), excluded payments made to a woman after she attains the age of 62.

Subsec. (b)(1)(B). Act Aug. 1, 1956, ch. 836, §201(c), excepted from term ''employment'' services performed by foreign agricultural workers lawfully admitted from any foreign country or possession thereof, on a temporary basis to perform agricultural labor.

Subsec. (b)(6)(B)(ii). Act Aug. 1, 1956, ch. 836, §201(d)(1), included service performed in the employ of a Federal Home Loan Bank.

Subsec. (b)(6)(C)(vi). Act Aug. 1, 1956, ch. 836, §201(d)(2), substituted ''Civil Service Retirement Act'' for ''Civil Service Retirement Act of 1930'', and inserted ''(other than the retirement system of the Tennessee Valley Authority)'' after ''retirement system''.

Subsec. (b)(16), (17). Act Aug. 1, 1956, ch. 836, §§ 201(e)(1), 121d, added pars. (16) and (17).

Subsec. (i). Act Aug. 1, 1956, ch. 837, § 410, designated existing provisions as par. (1) and added par. (2).

Subsec. (k)(1). Act Aug. 1, 1956, ch. 836, § 201(k), (*l*), inserted ''or at any time prior to January 1, 1959, whichever is the later'' after ''the certificate is in effect'', and substituted ''the first day of the calendar quarter in which such certificate is filed or the first day of the succeeding calendar quarter, as may be specified in the certificate,'' for ''the first day following the close of the calendar quarter in which such certificate is filed,''.

Subsec. (*l*)(6). Act Aug. 1, 1956, ch. 836, § 103(j), inserted reference to the Federal Disability Insurance Trust Fund.

Subsec. (*l*)(8)(A). Act Aug. 1, 1956, ch. 836, § 201(j), substituted ''not less than 20 percent'' for ''more than 50 percent''.

Subsecs. (m), (n). Act Aug. 1, 1956, ch. 837, § 411(a), added subsecs. (m) and (n).

Subsec. (*o*). Act Aug. 1, 1956, ch. 836, § 201(h)(2), added subsec. (*o*).

1954—Subsec. (a)(1). Act Sept. 1, 1954, § 204(a), substituted ''$4,200'' for ''$3,600'' wherever appearing.

Subsec. (a)(7)(B). Act Sept. 1, 1954, § 204(b)(1), made coverage of domestic service dependent solely on receipt of $50 in cash wages in a calendar quarter by an employee from an employer for such service.

Subsec. (a)(7)(C). Act Sept. 1, 1954, § 204(b)(2), added subpar. (C).

Subsec. (a)(8). Act Sept. 1, 1954, § 204(b)(3), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(1). Act Sept. 1, 1954, § 205(a), made coverage of agricultural labor depend solely on the payment of cash remuneration of $100 or more per year, thereby eliminating the need for an agricultural laborer to have served a qualifying calendar quarter and to have worked on a full time basis for 60 days during a succeeding calendar quarter and to have received $50 or more for his labor during such succeeding calendar quarter, removed the specific exception from employment of services performed in connection with the ginning of cotton, and added an exception for services performed by West Indian agricultural workers lawfully admitted to the United States on a temporary basis.

Subsec. (b)(3). Act Sept. 1, 1954, § 205(b), struck out par. (3) and redesignated pars. (4) to (14) as (3) to (13), respectively.

Subsec. (b)(4). Act Sept. 1, 1954, § 205(c), amended par. (4), as redesignated, to make the exception with respect to services on non-American vessels or aircraft applicable only if the individual is not a United States citizen or the employer is not an American employer.

Subsec. (b)(6)(B). Act Sept. 1, 1954, § 205(d)(1)(A), amended par. (6), as redesignated, by inserting in subpar. (B) ''by an individual'' after ''service is performed'' and ''and if such service is covered by a retirement system established by such instrumentality'' after ''December 31, 1950''.

Subsec. (b)(6)(B)(v). Act Sept. 1, 1954, § 205(d)(1)(B), amended par. (6), as redesignated, by adding cl. (v) to subpar. (B).

Subsec. (b)(6)(C). Act Sept. 1, 1954, § 205(d)(2), struck out exception from coverage for services in the following categories: temporary employees in the Post Office Department field service; temporary census taking employees of the Bureau of the Census; Federal employees paid on a contract or fee basis; Federal employees receiving compensation of $12 a year or less; certain consular agents; individuals employed under Federal unemployment relief programs; and members of State, county, or community committees under the Commodity Stabilization Service and similar bodies, unless such bodies are composed exclusively of full-time Federal employees, and limited the exclusion of inmates or patients of United States institutions to inmates of penal institutions.

Subsec. (b)(14) to (17). Act Sept. 1, 1954, § 205(e), struck out par. (15) and redesignated pars. (16) and (17) as (14) and (15), respectively.

Subsec. (c). Act Sept. 1, 1954, § 205(b), substituted ''subsection (b)(9)'' for ''subsection (b)(10)''.

Subsec. (d)(3)(C). Act Sept. 1, 1954, § 206(a), struck out requirement that performance of services of homeworkers be subject to State licensing requirements.

Subsec. (k)(1). Act Sept. 1, 1954, §§ 205(b), 207, substituted ''(b)(8)(B)'' for ''(b)(9)(B)'' and provided that the list accompanying any certificate filed by a nonprofit organization with respect to its lay employees may be amended only within a period of two years after the certificate takes effect and provided that a supplemental list filed after the first month following the first calendar quarter for which the certificate is in effect shall be in effect only as to those services performed by an individual on the list which are performed by him after the calendar quarter in which the supplemental list is filed.

Subsec. (*l*). Act Sept. 1, 1954, § 209, added subsec. (*l*).

CHANGE OF NAME

''United States magistrate judge'' substituted for ''United States magistrate'' in subsec. (b)(5)(E) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Pub. L. 110–245, title I, § 115(d), June 17, 2008, 122 Stat. 1637, provided that: ''The amendments made by this section [amending this section, sections 3306 and 3401 of this title, and section 409 of Title 42, The Public Health and Welfare] shall take effect as if included in section 5 of the Mortgage Forgiveness Debt Relief Act of 2007 [Pub. L. 110–142].''

Pub. L. 110–245, title III, § 302(c), June 17, 2008, 122 Stat. 1648, provided that: ''The amendment made by this section [amending this section and section 410 of Title 42, The Public Health and Welfare] shall apply to services performed in calendar months beginning more than 30 days after the date of the enactment of this Act [June 17, 2008].''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provision of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 8(b) of Pub. L. 110–172, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by Pub. L. 108–375 applicable to travel benefits provided after Oct. 28, 2004, see section 585(b)(3) of Pub. L. 108–375, set out as a note under section 134 of this title.

Amendment by section 251(a)(1)(A) of Pub. L. 108–357 applicable to stock acquired pursuant to options exercised after Oct. 22, 2004, see section 251(d) of Pub. L. 108–357, set out as a note under section 421 of this title.

Amendment by section 320(b)(1) of Pub. L. 108–357 applicable to amounts received by an individual in taxable years beginning after Dec. 31, 2003, see section 320(c) of Pub. L. 108–357, set out as a note under section 108 of this title.

Amendment by section 802(c)(1) of Pub. L. 108–357 effective Mar. 4, 2003, see section 802(d) of Pub. L. 108–357, set out as an Effective Date note under section 4985 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–121 applicable to taxable years beginning after Dec. 31, 2002, see section 106(c) of Pub. L. 108–121, set out as a note under section 134 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. A, §101(h) [title VIII, §805], Oct. 21, 1998, 112 Stat. 2681–480, 2681–538, provided that: ''Except as otherwise specifically provided, this title [amending this section and section 410 of Title 42, The Public Health and Welfare, and amending provisions set out as a note under this section] and the amendments made by this title shall take effect as if included in the enactment of title XI of the Balanced Budget Act of 1997 [title XI of Pub. L. 105–33, see Effective Date of 1997 Amendment note below].''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–33, title XI, §11246(b)(4), formerly §11246(b)(3), Aug. 5, 1997, 111 Stat. 756, renumbered §11246(b)(4), by Pub. L. 105–277, div. A, §101(h) [title VIII, §802(a)(1)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–532, provided that: ''The amendments made by this subsection [amending this section and section 410 of Title 42, The Public Health and Welfare] shall apply with respect to all months beginning after the date on which the Director of the Office of Personnel Management issues regulations to carry out section 11–1726, District of Columbia Code (as amended by paragraph (1)).''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1116(a)(3) of Pub. L. 104–188 provided that:

''(A) IN GENERAL.—The amendments made by this subsection [amending this section, section 6050A of this title, and section 410 of Title 42, The Public Health and Welfare] shall apply to remuneration paid—

''(i) after December 31, 1994, and

''(ii) after December 31, 1984, and before January 1, 1995, unless the payor treated such remuneration (when paid) as being subject to tax under chapter 21 of the Internal Revenue Code of 1986.

''(B) REPORTING REQUIREMENT.—The amendment made by paragraph (1)(C) [amending section 6050A of this title] shall apply to remuneration paid after December 31, 1996.''

Amendment by section 1421(b)(8)(A) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Section 1458(c)(2) of Pub. L. 104–188 provided that: ''The amendments made by subsection (b) [amending this section and section 409 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1996.''

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by section 2(a)(1)(A), (B) of Pub. L. 103–387 applicable to remuneration paid after Dec. 31, 1993, and amendment by section 2(a)(1)(C) of Pub. L. 103–387 applicable to services performed after Dec. 31, 1994, see section 2(a)(3) of Pub. L. 103–387, set out as a note under section 3102 of this title.

Amendment by section 108(h)(2) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

Amendment by section 303(a)(2), (b)(2) of Pub. L. 103–296 applicable with respect to service performed on or after Jan. 1, 1995, see section 303(e) of Pub. L. 103–296, set out as a note under section 410 of Title 42.

Amendment by section 319(a)(1), (5) of Pub. L. 103–296 applicable with respect to service performed after calendar quarter following calendar quarter in which Aug. 15, 1994, occurs, see section 319(c) of Pub. L. 103–296, set out as a note under section 1402 of this title.

Amendment by section 320(a)(1)(C) of Pub. L. 103–296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103–296, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to 1994 and later calendar years, see section 13207(e) of Pub. L. 103–66, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11331(a) of Pub. L. 101–508 applicable to 1991 and later calendar years, see section 11331(e) of Pub. L. 101–508, set out as a note under section 1402 of this title.

Section 11332(d) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 410 and 418 of Title 42, The Public Health and Welfare] shall apply with respect to service performed after July 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by Pub. L. 101–239 applicable with respect to any agreement in effect under section 3121(*l*) of this title on or after June 15, 1989, with respect to which no notice of termination is in effect on such date, see section 10201(c) of Pub. L. 101–239, set out as a note under section 406 of this title.

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1011B(a)(22)(F) of Pub. L. 100–647 provided that: ''The amendments made by this paragraph [amending this section, sections 3231, 3306, and 3401 of this title, and section 409 of Title 42, The Public Health and Welfare] shall not apply to any individual who separated from service with the employer before January 1, 1989.''

Section 1018(r)(2)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to services performed after March 31, 1986.''

Amendment by sections 1001(d)(2)(C)(i), (g)(4)(B)(i), 1011(e)(8), 1011B(a)(23)(A), and 1018(u)(35) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 3043(c)(2) of Pub. L. 100–647 applicable to all periods beginning before, on, or after Nov. 10, 1988, with no inference created as to existence or nonexistence or scope of any exemption from tax for income derived from fishing rights secured as of Mar. 17, 1988, by any treaty, law, or Executive Order, see section 3044 of Pub. L. 100–647, set out as an Effective Date note under section 7873 of this title.

Section 8015(b)(3) of Pub. L. 100–647 provided that: ''The amendments made by this subsection [amending this section and section 410 of Title 42, The Public Health and Welfare] shall apply as if such amendments had been included or reflected in section 304 of the Federal Employees' Retirement System Act of 1986 (100 Stat. 606) [Pub. L. 99–335] at the time of its enactment [June 6, 1986].''

Section 8015(c)(3) of Pub. L. 100–647 provided that: ''The amendments made by this subsection [amending this section and section 410 of Title 42] shall apply to any individual only upon the performance by such individual of service described in subparagraph (C), (D), (E), (F), (G), or (H) of section 210(a)(5) of the Social Security Act (42 U.S.C. 410(a)(5)) on or after the date of the enactment of this Act [Nov. 10, 1988].''

Amendment by section 8016(a)(3)(A), (4)(A), (C) of Pub. L. 100–647 effective Nov. 10, 1988, except that any amendment to a provision of a particular Public Law which is referred to by its number, or to a provision of

the Social Security Act [42 U.S.C. 301 et seq.], or to this title as added or amended by a provision of a particular Public Law which is so referred to, effective as though included or reflected in the relevant provisions of that Public Law at the time of its enactment, see section 8016(b) of Pub. L. 100–647, set out as a note under section 3111 of this title.

Section 8017(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 409 of Title 42, The Public Health and Welfare] shall take effect as if included in the amendments made by section 9002 of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9001(d) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 409, 410, and 429 of Title 42, The Public Health and Welfare] shall apply with respect to remuneration paid after December 31, 1987.''

Section 9002(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and section 409 of Title 42] shall apply with respect to remuneration for agricultural labor paid after December 31, 1987.''

Section 9003(b) of Pub. L. 100–203, as amended by Pub. L. 100–647, title VIII, § 8013(a), Nov. 10, 1988, 102 Stat. 3789, provided that: ''The amendments made by subsection (a) [amending this section and section 409 of Title 42] shall apply with respect to group-term life insurance coverage in effect after December 31, 1987, except that such amendments shall not apply with respect to payments by the employer (or a successor of such employer) for group-term life insurance for such employer's former employees who separated from employment with the employer on or before December 31, 1988, to the extent that such payments are not for coverage for any such employee for any period for which such employee is employed by such employer (or a successor of such employer) after the date of such separation.''

[Section 8013(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending section 9003(b) of Pub. L. 100–203, set out above] shall apply as if such amendment had been included or reflected in section 9003(b) of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203] at the time of its enactment.'']

Section 9004(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and section 410 of Title 42] shall apply with respect to to remuneration paid after December 31, 1987.''

Section 9005(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and section 410 of Title 42] shall apply with respect to to remuneration paid after December 31, 1987.''

Amendment by section 9006(a), (b)(2) of Pub. L. 100–203 applicable with respect to tips received and wages paid on or after Jan. 1, 1988, see section 9006(c) of Pub. L. 100–203, set out as a note under section 3111 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 122(e)(1) of Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1108(g)(7) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1108(h) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1151(d)(2)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1983, see section 1151(k)(5) of Pub. L. 99–514, set out as a note under section 79 of this title.

Amendment by section 1882(c) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1895(b)(18)(C) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section and section 410 of Title 42, The Public Health and Welfare] shall apply to services performed after March 31, 1986.''

Amendment by Pub. L. 99–509, except as otherwise provided, effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of Title 42, see section 9002(d) of Pub. L. 99–509, set out as a note under section 418 of Title 42.

Amendment by section 12112(b) of Pub. L. 99–272 effective with respect to service performed after Dec. 31, 1983, see section 12112(c) of Pub. L. 99–272, set out as a note under section 409 of Title 42.

Section 13205(d)(1) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section and sections 1402, 3122, 3125, 6205, and 6413 of this title] shall apply to services performed after March 31, 1986.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–221 applicable to any return to performance of service in employ of United States, or of an instrumentality thereof, after 1983, see section 3(c) of Pub. L. 99–221, set out as a note under section 410 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 67(c) of Pub. L. 98–369 applicable to payments under agreements entered into or renewed after June 14, 1984, in taxable years ending after such date, with contracts entered into before June 15, 1984, which are amended after June 14, 1984, in any significant relevant aspect to be treated as a contract entered into after June 14, 1984, see section 67(e) of Pub. L. 98–369, set out as an Effective Date note under section 280G of this title.

Amendment by section 491(d)(36) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 531(d)(1)(A) of Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of this title.

Amendment by section 2601(b) of Pub. L. 98–369 effective with respect to service performed after Dec. 31, 1983, with enumerated exceptions, see section 2601(f) of Pub. L. 98–369, set out as a note under section 410 of Title 42, The Public Health and Welfare.

Amendment by section 2603(a)(2), (b) of Pub. L. 98–369 applicable to service performed after Dec. 31, 1983, see section 2603(e) of Pub. L. 98–369, set out as a note under section 410 of Title 42.

Section 2661(*o*)(3) of Pub. L. 98–369 provided that the amendment made by that section is effective Jan. 1, 1984.

Amendment by section 2663 of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of Title 42.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 101(d) of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title VI, § 2662(a), July 18, 1984, 98 Stat. 1159, provided that: ''The amendments made by this section [amending this section and sections 409 and 410 of Title 42, The Public Health and Welfare] shall be effective with respect to service performed after December 31, 1983.''

Section 102(c) of Pub. L. 98–21 provided that: ''The amendments made by the preceding provisions of this section [amending this section and section 410 of Title

42] shall be effective with respect to service performed after December 31, 1983 (but the provisions of sections 2 and 3 of Public Law 94–563 [set out below] and section 312(c) of Public Law 95–216 [set out below] shall continue in effect, to the extent applicable, as though such amendments had not been made).''

Amendment by section 321 of Pub. L. 98–21, applicable to agreements entered into after Apr. 20, 1983, except that at the election of any American employer such amendment shall also apply to any agreement entered into on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98–21 set out as a note under section 406 of this title.

Section 322(c) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section, section 1402 of this title, and sections 410 and 411 of Title 42, The Public Health and Welfare] shall be effective for taxable years beginning on or after the date of the enactment of this Act [Apr. 20, 1983].''

Section 323(c)(1) of Pub. L. 98–21 provided that: ''The amendments made by subsection (a) [amending this section and section 410 of Title 42] shall apply to remuneration paid after December 31, 1983.''

Section 324(d) of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title VI, §2662(f)(2), July 18, 1984, 98 Stat. 1159; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Except as otherwise provided in this subsection, the amendments made by this section [amending this section, section 3306 of this title, and sections 403 and 409 of Title 42 and enacting provisions set out as a note under section 3306 of this title] shall apply to remuneration paid after December 31, 1983. For purposes of applying such amendments to remuneration paid after December 31, 1983, which would have been taken into account before January 1, 1984, if such amendments had applied to periods before January 1, 1984, such remuneration shall be taken into account when paid (or, at the election of the payor, at the time which would be appropriate if such amendments had applied).

''(2) Except as otherwise provided in this subsection, the amendments made by subsection (b) [amending section 3306 of this title and enacting provisions set out as a note under section 3306 of this title] shall apply to remuneration paid after December 31, 1984. For purposes of applying such amendments to remuneration paid after December 31, 1984, which would have been taken into account before January 1, 1985, if such amendments had applied to periods before January 1, 1985, such remuneration shall be taken into account when paid (or, at the election of the payor, at the time which would be appropriate if such amendments had applied).

''(3) The amendments made by this section shall not apply to employer contributions made during 1984 and attributable to services performed during 1983 under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) if, under the terms of such arrangement as in effect on March 24, 1983—

''(A) the employee makes an election with respect to such contribution before January 1, 1984, and

''(B) the employer identifies the amount of such contribution before January 1, 1984.

In the case of the amendments made by subsection (b), the preceding sentence shall be applied by substituting '1985' for '1984' each place it appears and by substituting 'during 1984' for 'during 1983'.

''(4) In the case of an agreement in existence on March 24, 1983, between a nonqualified deferred compensation plan (as defined in section 3121(v)(2)(C) of the Internal Revenue Code of 1986, as added by this section) and an individual—

''(A) the amendments made by this section (other than subsection (b)) shall apply with respect to services performed by such individual after December 31, 1983, and

''(B) the amendments made by subsection (b) shall apply with respect to services performed by such individual after December 31, 1984.

The preceding sentence shall not apply in the case of a plan to which section 457(a) of such Code applies. For purposes of this paragraph, any plan or agreement to make payments described in paragraph (2), (3), or (13)(A)(iii) of section 3121(a) of such Code (as in effect on the day before the date of the enactment of this Act [Apr. 20, 1983]) shall be treated as a nonqualified deferred compensation plan.''

Section 327(d) of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title VI, §2662(g), July 18, 1984, 98 Stat. 1160; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendment made by subsection (a) [amending this section and section 409 of Title 42] shall apply to remuneration paid after December 31, 1983.

''(2) The amendments made by subsection (b) and subsection (c)(4) [amending this section, section 3306 of this title, and section 409 of Title 42] shall apply to remuneration (other than amounts excluded under section 119 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) paid after March 4, 1983, and to any such remuneration paid on or before such date which the employer treated as wages when paid.

''(3) The amendments made by paragraphs (1), (2), and (3) of subsection (c) [amending section 3306 of this title] shall apply to remuneration paid after December 31, 1984.''

Section 328(d) of Pub. L. 98–21 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section, section 3306 of this title, and section 409 of Title 42] shall apply to remuneration paid after December 31, 1983.

''(2) The amendments made by subsection (c) [amending section 3306 of this title] shall apply to remuneration paid after December 31, 1984.''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 278(c)(1) of Pub. L. 97–248 provided that: ''The amendments made by subsection (a) [amending this section and sections 1402 and 3122 of this title] shall apply to remuneration paid after December 31, 1982.''

EFFECTIVE DATE OF 1981 AMENDMENTS

Section 3(g) of Pub. L. 97–123 provided that:

''(1) Except as provided in paragraph (2), this section (and the amendments made by this section) [amending this section, section 3231 of this title, and section 409 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 3101 of this title] shall apply to remuneration paid after December 31, 1981.

''(2) This section (and the amendments made by this section) shall not apply with respect to any payment made by a third party to an employee pursuant to a contractual relationship of an employer with such third party entered into before December 14, 1981, if—

''(A) coverage by such third party for the group in which such employee falls ceases before March 1, 1982, and

''(B) no payment by such third party is made to such employee under such relationship after February 28, 1982.''

Amendment by Pub. L. 97–34 applicable to remuneration paid after Dec. 31, 1981, see section 124(f) of Pub. L. 97–34, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 1141(c) of Pub. L. 96–499, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section, section 3306 of this title, and section 409 of Title 42, The Public Health and Welfare] shall apply with respect to remuneration paid after December 31, 1980.

''(2) EXCEPTION FOR STATE AND LOCAL GOVERNMENTS.—

''(A) The amendments made by this section (insofar as they affect the application of section 218 of the Social Security Act [42 U.S.C. 418]) shall not apply to any payment made before January 1, 1984, by any

governmental unit for positions of a kind for which all or a substantial portion of the social security employee taxes were paid by such governmental unit (without deduction from the remuneration of the employee) under the practices of such governmental unit in effect on October 1, 1980.

''(B) For purposes of subparagraph (A), the term 'social security employee taxes' means the amount required to be paid under section 218 of the Social Security Act [42 U.S.C. 418] as the equivalent of the taxes imposed by section 3101 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

''(C) For purposes of subparagraph (A), the term 'Governmental unit' means a State or political subdivision thereof within the meaning of section 218 of the Social Security Act [42 U.S.C. 418].''

Section 101(b)(1)(E) of Pub. L. 96–222 provided that: ''The amendments made by subparagraph (B) of subsection (a)(10) [amending this section and section 3306 of this title] shall apply to payments made on or after January 1, 1979.''

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–600 applicable with respect to taxable years beginning after Dec. 31, 1978, see section 164(d) of Pub. L. 95–600, set out as an Effective Date note under section 127 of this title.

Section 3(d) of Pub. L. 95–472 provided that: ''The amendments made by this section [amending this section, section 3306 of this title, and section 409 of Title 42, The Public Health and Welfare] shall apply with respect to taxable years beginning after December 31, 1976.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 312(h) of Pub. L. 95–216, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsections (a), (b), (d), (e), (f), and (g) of this section [amending this section and provisions set out below] shall be effective as though they had been included as a part of the amendments made to section 3121(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by the first section of Public Law 94–563 (or, in the case of the amendments made by subsection (e), as a part of section 3 of such Public Law).''

Section 314(c) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section and section 3306 of this title] shall apply with respect to wages paid after December 31, 1978.''

Amendment by section 315(a) of Pub. L. 95–216 applicable with respect to wages paid with respect to employment performed in months after Dec. 1977, see section 315(c) of Pub. L. 95–216, set out as a note under section 3111 of this title.

Section 356(e) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section] shall apply with respect to remuneration paid and services rendered after December 31, 1977.''

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 1(d) of Pub. L. 94–563, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and section 410 of Title 42, The Public Health and Welfare], shall apply with respect to services performed after 1950, to the extent covered by waiver certificates filed or deemed to have been filed under section 3121(k)(4) or (5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by such amendments).''

Section 1207(f)(4) of Pub. L. 94–455, as amended by Pub. L. 95–600, title VII, § 701(z)(1), Nov. 6, 1978, 92 Stat. 2921; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) The amendments made by paragraphs (1)(A) and (2)(A) of subsection (e) [amending this section and section 410 of Title 42, The Public Health and Welfare] shall apply to services performed after December 31, 1954. The amendments made by paragraphs (1)(B), (1)(C), and (2)(B) of such subsection [amending sections 1401 and 3401 of this title and section 411 of Title 42] shall apply to taxable years ending after December 31, 1954. The amendments made by paragraph (3) of such subsection [enacting section 6050A and amending section 6652 of this title] shall apply to calendar years beginning after the date of the enactment of this Act [Oct. 4, 1976].

''(B) Notwithstanding subparagraph (A), if the owner or operator of any boat treated a share of the boat's catch of fish or other aquatic animal life (or a share of the proceeds therefrom) received by an individual after December 31, 1954, and before the date of the enactment of this act [Oct. 4, 1976] for services performed by such individual after December 31, 1954, on such boat as being subject to the tax under chapter 21 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], then the amendments made by paragraphs (1)(A) and (B) and (2) of subsection (c) shall not apply with respect to such services performed by such individual (and the share of the catch, or the proceeds therefrom, received by him for such services).''

[Section 701(z)(2) of Pub. L. 95–600 provided that: ''The amendments made by paragraph (1) [amending section 1207(f)(4) of Pub. L. 94–455, set out above] shall take effect on October 4, 1976.'']

Amendment by section 1903 of Pub. L. 94–455 applicable with respect to wages paid after Dec. 31, 1976, see section 1903(d) of Pub. L. 94–455, set out as a note under section 3101 of this title.

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of Title 42.

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by section 104(i) of Pub. L. 92–603 applicable only with respect to payments after 1974, see section 104(j) of Pub. L. 92–603, set out as a note under section 414 of Title 42, The Public Health and Welfare.

Amendment by sections 122(b) and 138(b) of Pub. L. 92–603 applicable in the case of any payment made after December 1972, see sections 122(c) and 138(c) of Pub. L. 92–603, set out as notes under section 409 of Title 42.

Amendment by section 128(b) of Pub. L. 92–603 applicable with respect to service performed on and after first day of calendar quarter which begins on or after Oct. 30, 1972, see section 128(c) of Pub. L. 92–603, set out as a note under section 410 of Title 42.

Amendment by section 129(a)(2) of Pub. L. 92–603 applicable to services performed after Dec. 31, 1972, see section 129(b) of Pub. L. 92–603, set out as a note under section 410 of Title 42.

Amendment by Pub. L. 92–336 applicable only with respect to remuneration paid after December 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of Title 42.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable only with respect to remuneration paid after December 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to tax returns the date prescribed by law for filing of which is after Dec. 31, 1969, see section 943(d) of Pub. L. 91–172, set out as a note under section 6651 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 108(b) of Pub. L. 90–248 applicable only with respect to remuneration paid after De-

cember 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Amendment by section 123(b) of Pub. L. 90–248 applicable with respect to services performed after Dec. 31, 1967, see section 123(c) of Pub. L. 90–248, set out as a note under section 410 of Title 42.

Section 504(d) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section, section 3306 of this title, and section 409 of Title 42] shall apply with respect to remuneration paid after the date of the enactment of this Act [Jan. 2, 1968].''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 311(b)(4), (5) of Pub. L. 89–97 applicable only with respect to services performed after 1965, see section 311(c) of Pub. L. 89–97, set out as an Effective Date of 1965 Amendment note under section 410 of Title 42, The Public Health and Welfare.

Amendment by section 313 of Pub. L. 89–97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89–97, set out as an Effective Date note under section 6053 of this title.

Section 316(a)(2) of Pub. L. 89–97 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply in the case of any certificate filed under section 3121(k)(1)(A) of such Code after the date of the enactment of this Act [July 30, 1965].''

Amendment by section 317 of Pub. L. 89–97 applicable with respect to services performed after quarter ending September 30, 1965, and after quarter in which Secretary of the Treasury receives a certification from Commissioners of District of Columbia expressing their desire to have insurance system established by sections 401 et seq. and 1395c et seq. of Title 42 extended to the officers and employees coming under provisions of such amendments, see section 317(g) of Pub. L. 89–97, set out as a note under section 410 of Title 42.

Section 320(c) of Pub. L. 89–97 provided that: ''The amendments made by subsections (a)(1) and (a)(3)(A) [amending sections 409 and 413 of Title 42], and the amendments made by subsection (b) (except paragraph (1) thereof) [amending this section and sections 3122, 3125, and 6413 of this title], shall apply only with respect to remuneration paid after December 1965. The amendments made by subsections (a)(2), (a)(3)(B), and (b)(1) [amending section 1402 of this title and sections 411 and 413 of Title 42] shall apply only with respect to taxable years ending after 1965. The amendment made by subsection (a)(4) [amending section 415 of Title 42] shall apply only with respect to calendar years after 1965.''

EFFECTIVE DATE OF 1964 AMENDMENTS

Section 4(d) of Pub. L. 88–650 provided that: ''The amendments made by this section [amending this section, section 3306 of this title, and section 409 of Title 42, The Public Health and Welfare] shall apply with respect to remuneration paid on or after the first day of the first calendar month which begins more than ten days after the date of the enactment of this Act [Oct. 13, 1964].''

Amendment by Pub. L. 88–272 applicable to remuneration paid after Dec. 31, 1962, see section 220(d) of Pub. L. 88–272, set out as an Effective Date note under section 406 of this title.

EFFECTIVE DATE OF 1961 AMENDMENTS

Section 202(c) of Pub. L. 87–293 provided that: ''The amendments made by subsections (a) and (b) of this section [amending this section, sections 3122 and 6051 of this title, and sections 405, 409, and 410 of Title 42, The Public Health and Welfare] shall apply with respect to service performed after the date of the enactment of this Act [Sept. 22, 1961]. In the case of any individual who is enrolled as a volunteer or volunteer leader under section 16(a) of this Act [section 2515(a) of Title 22, Foreign Relations and Intercourse] such amendments shall apply with respect to services performed on or after the effective date of such enrollment.'' [Section 202(c) of Pub. L. 87–293 repealed by Pub. L. 89–572, §5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments contained in such provisions, see section 5(b) of Pub. L. 89–572, set out as a note under former section 2515 of Title 22.]

Section 110(h)(3) of Pub. L. 87–256 provided that: ''The amendments made by subsections (e) and (f) of this section [amending this section, section 3306 of this title, and section 410 of Title 42, The Public Health and Welfare] shall apply with respect to service performed after December 31, 1961.''

EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment by section 103(n) of Pub. L. 86–778 applicable only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by title II of the Social Security Act (42 U.S.C. 401 et seq.) extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by title II of the Social Security Act extended to the officers and employees of such Government and such political subdivisions and instrumentalities, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of Title 42, The Public Health and Welfare, and such amendment applicable only as expressly provided therein, see section 103(v)(2) of Pub. L. 86–778, set out as a note under section 402 of Title 42.

Amendment by section 103(*o*), (p) of Pub. L. 86–778 applicable only with respect to service performed after 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of Title 42.

Amendment by section 104(b) of Pub. L. 86–778 applicable only with respect to services performed after 1960, see section 104(c) of Pub. L. 86–778, set out as a note under section 410 of Title 42.

Section 18(k) of Pub. L. 86–624 provided that: ''The amendments contained in subsections (a) through (j) of this section [amending this section and sections 2202, 3306, 4221, 4233, 4262, 4502, 4774, 7653, and 7701 of this title] shall be effective as of August 21, 1959.''

Section 105(d) of Pub. L. 86–778, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendments made by subsection (a) [amending this section] shall apply only with respect to certificates filed under section 3121(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] after the date of the enactment of this Act [Sept. 13, 1960].

''(2) No monthly benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] for the month in which this Act is enacted or any prior month shall be payable or increased by reason of the provisions of subsections (b) and (c) of this section or the amendments made by such subsections [amending section 1402 of this title and enacting provisions set out as notes under this section and 1402 of this title], and no lump-sum death payment under such title shall be payable or increased by reason of such provisions or amendments in the case of any individual who died prior to the date of the enactment of this Act [Sept. 13, 1960].''

EFFECTIVE DATE OF 1959 AMENDMENTS

Amendment by Pub. L. 86–168 effective Jan. 1, 1960, see section 203(c) of Pub. L. 86–168.

Section 22(i) of Pub. L. 86–70 provided that: ''The amendments contained in subsections (a) through (h) of this section [amending this section and sections 2202, 3306, 4221, 4233, 4262, 4502, 4774, 7621, 7653, and 7701 of this title] shall be effective as of January 3, 1959.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 402(e) of Pub. L. 85–840 provided that: ''The amendments made by subsections (b) and (c) [amending this section and section 3122 of this title] shall be applicable only with respect to remuneration paid after 1958.''

Section 404(b) of Pub. L. 85–840 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to service performed after 1958.''

Section 405(c) of Pub. L. 85–840, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to certificates filed under section 3121(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] after the date of enactment of this Act [Aug. 28, 1958] and requests filed under subparagraph (F) of such section after such date.''

EFFECTIVE DATE OF 1956 AMENDMENT

Section 201(m) of act Aug. 1, 1956, ch. 836, as amended by act Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095, provided that:

''(1) The amendments made by subsection (a) [enacting section 3113 of this title] and paragraph (1) of subsection (h) [amending this section] shall apply with respect to remuneration paid after 1956. The amendment made by subsection (b) [amending this section] shall apply with respect to remuneration paid after October 1956. The amendments made by subsection (c) and paragraph (2) of subsection (h) [amending this section] shall apply with respect to service performed after 1956. The amendments made by paragraphs (1) and (2) of subsection (d) [amending this section] shall apply with respect to service with respect to which the amendments made by paragraphs (1) and (2) of subsection (b) of section 104 of this Act [amending section 410 of Title 42, The Public Health and Welfare] apply. The amendments made by paragraph (1) of subsection (e) [amending this section] shall apply with respect to service performed after 1954. The amendment made by paragraph (3) of such subsection shall [amending section 1402 of this title] apply with respect to taxable years ending after 1954. The amendments made by paragraph (2) of subsection (e) and by subsection (f) [amending section 1402 of this title] shall apply with respect to taxable years ending after 1955. The amendment made by subsection (i) [amending section 1402 of this title] shall apply with respect to taxable years ending on or after December 31, 1956. The amendment made by subsection (*l*) [amending this section] shall apply with respect to certificates filed after 1956 under section 3121(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

''(2)(A) Except as provided in subparagraph (B), the amendment made by subsection (g) [amending section 1402 of this title] shall apply only with respect to taxable years ending after 1956.

''(B) Any individual who, for a taxable year ending after 1954 and prior to 1957, had income which by reason of the amendment made by subsection (g) would have been included within the meaning of 'net earnings from self-employment' (as such term is defined in section 1402(a) of the Internal Revenue Code of 1986), if such income had been derived in a taxable year ending after 1956 by an individual who had filed a waiver certificate under section 1402(e) of such Code, may elect to have the amendment made by subsection (g) apply to his taxable years ending after 1954 and prior to 1957. No election made by any individual under this subparagraph shall be valid unless such individual has filed a waiver certificate under section 1402(e) of such Code prior to the making of such election or files a waiver certificate at the time he makes such election.

''(C) Any individual described in subparagraph (B) who has filed a waiver certificate under section 1402(e) of such Code prior to the date of enactment of this Act [Aug. 1, 1956], or who files a waiver certificate under such section on or before the due date of his return (including any extension thereof) for his last taxable year ending prior to 1957, must make such election on or before the due date of his return (including any extension thereof) for his last taxable year ending prior to 1957, or before April 16, 1957, whichever is the later.

''(D) Any individual described in subparagraph (B) who has not filed a waiver certificate under section 1402(e) of such Code on or before the due date of his return (including any extension thereof) for his last taxable year ending prior to 1957 must make such election on or before the due date of his return (including any extension thereof) for his first taxable year ending after 1956. Any individual described in this subparagraph whose period for filing a waiver certificate under section 1402(e) of such Code has expired at the time he makes such election may, notwithstanding the provisions of paragraph (2) of such section, file a waiver certificate at the time he makes such election.

''(E) An election under subparagraph (B) shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe by regulations. Notwithstanding the provisions of paragraph (3) of section 1402(e) of such Code, the waiver certificate filed by an individual who makes an election under subparagraph (B) (regardless of when filed) shall be effective for such individual's first taxable year ending after 1954 in which he had income which by reason of the amendment made by subsection (g) would have been included within the meaning of 'net earnings from self-employment' (as such term is defined in section 1402(a) of such Code), if such income had been derived in a taxable year ending after 1956 by an individual who had filed a waiver certificate under section 1402(e) of such Code, or for the taxable year prescribed by such paragraph (3) of section 1402(e), if such taxable year is earlier, and for all succeeding taxable years.

''(F) No interest or penalty shall be assessed or collected for failure to file a return within the time prescribed by law, if such failure arises solely by reason of an election made by an individual under subparagraph (B), or for any underpayment of the tax imposed by section 1401 of such Code arising solely by reason of such election, for the period ending with the date such individual makes an election under subparagraph (B).

''(3) Any tax under chapter 2 of the Internal Revenue Code of 1986 [section 1401 et seq. of this title] which is due, solely by reason of the enactment of subsection (f) [amending section 1402 of this title], or paragraph (2) of subsection (e), of this section [amending section 1402 of this title], for any taxable year ending on or before the date of the enactment of this Act [Aug. 1, 1956] shall be considered timely paid if payment is made in full on or before the last day of the sixth calendar month following the month in which this Act is enacted. In no event shall interest be imposed on the amount of any tax due under such chapter solely by reason of the enactment of subsection (f), or paragraph (2) of subsection (e), of this section for any period before the day after the date of enactment of this Act.

''(4) Any tax due under chapter 21 of the Internal Revenue Code of 1986 [this chapter] which is due, solely by reason of the enactment of subsection (d) [amending this section] and an effective date prescribed pursuant to paragraph (2)(B) or (2)(C) of section 104(i) [set out as a note under section 410 of Title 42, The Public Health and Welfare], for any calendar quarter beginning prior to the day on which the Secretary of Health, Education, and Welfare approves the plan which prescribes such effective date shall be considered timely paid if payment is made in full on or before the last day of the sixth calendar month following the month in which such plan is approved. In no event shall interest be imposed on the amount of any such tax due under such chapter for any period before the day on which the Secretary of Health, Education, and Welfare approves such plan.''

Amendment by act Aug. 1, 1956, ch. 837, effective Jan. 1, 1957, see section 603(a) of act Aug. 1, 1956.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 204(c) of act Sept. 1, 1954, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall be applicable only with respect to remuneration paid after 1954.''

Section 205(f) of act Sept. 1, 1954, provided that: ''The amendments made by subsections (c), (d), and (e) [amending this section] shall be applicable only with respect to services performed after 1954. The amendments made by subsections (a) and (b) [amending this section] shall be applicable only with respect to services (whether performed after 1954 or prior to 1955) for which the remuneration is paid after 1954.''

Section 206(b) of act Sept. 1, 1954, provided that: ''The amendment made by subsection (a) [amending this section] shall be applicable only with respect to services performed after 1954.''

REGULATIONS

Section 3(d) of Pub. L. 97–123, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The regulations prescribed under the last sentence of section 3121(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and the regulations prescribed under subparagraph (D) of section 3231(e)(4) of such Code, shall provide procedures under which, if (with respect to any employee) the third party promptly—

''(A) withholds the employee portion of the taxes involved,

''(B) deposits such portion under section 6302 of such Code, and

''(C) notifies the employer of the amount of the wages or compensation involved,

the employer (and not the third party) shall be liable for the employer portion of the taxes involved and for meeting the requirements of section 6051 of such Code (relating to receipts for employees) with respects to the wages or compensation involved.

''(2) For purposes of paragraph (1)—

''(A) the term 'employer' means the employer for whom services are normally rendered,

''(B) the term 'taxes involved' means, in the case of any employee, the taxes under chapters 21 and 22 which are payable solely by reason of the parenthetical matter contained in subparagraph (B) of section 3121(a)(2) of such Code, or solely by reason of paragraph (4) of section 3231(e) of such Code, and

''(C) the term 'wages or compensation involved' means, in the case of any employee, wages or compensation with respect to which taxes described in subparagraph (B) are imposed.''

REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 202(a)(1), (2) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, §5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under section 2515 of Title 22, Foreign Relations and Intercourse.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of Public Health Service, of Surgeon General of Public Health Service, and of all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 3508 of Title 20, Education.

Coast and Geodetic Survey consolidated with National Weather Bureau in 1965 to form Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. Commissioned Officer Corps of Environmental Science Services Administration changed to Commissioned Officer Corps of National Oceanic and Atmospheric Administration, see 1970 Reorg. Plan No. 4, §4(d), eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5.

SUBVERSIVE ACTIVITIES CONTROL BOARD

The Subversive Activities Control Board was established by act Sept. 23, 1950, ch. 1024, §12, 64 Stat. 977 and ceased to operate June 30, 1973.

NO INFERENCE TO BE DRAWN FROM AMENDMENT BY PUB. L. 108–121

No inference to be drawn from amendment to subsec. (a)(18) of this section by section 106 of Pub. L. 108–121 with respect to tax treatment of any amounts under program described in section 134(b)(4) of this title for any taxable year beginning before Jan. 1, 2003, see section 106(d) of Pub. L. 108–121, set out as a note under section 134 of this title.

LINE ITEM VETO

Section 642(d)(2) of Pub. L. 105–61, amending this section, was subject to line item veto by the President, Cancellation No. 97–56, signed Oct. 16, 1997, 62 F.R. 54338, Oct. 17, 1997. For decision holding line item veto unconstitutional, see *Clinton v. City of New York*, 524 U.S. 417, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998).

CLARIFICATION OF STANDARD TO BE USED IN DETERMINING EMPLOYMENT TAX STATUS OF SECURITIES BROKERS

Pub. L. 105–34, title IX, §921, Aug. 5, 1997, 111 Stat. 879, provided that:

''(a) IN GENERAL.—In determining for purposes of the Internal Revenue Code of 1986 whether a registered representative of a securities broker-dealer is an employee (as defined in section 3121(d) of the Internal Revenue Code of 1986), no weight shall be given to instructions from the service recipient which are imposed only in compliance with investor protection standards imposed by the Federal Government, any State government, or a governing body pursuant to a delegation by a Federal or State agency.

''(b) EFFECTIVE DATE.—Subsection (a) shall apply to services performed after December 31, 1997.''

TREATMENT OF CERTAIN UNIVERSITY ACCOUNTS

Section 1802 of Pub. L. 104–188 provided that:

''(a) IN GENERAL.—For purposes of subsection (s) of section 3121 of the Internal Revenue Code of 1986 (relating to concurrent employment by 2 or more employers)—

''(1) the following entities shall be deemed to be related corporations that concurrently employ the same individual:

''(A) a State university which employs health professionals as faculty members at a medical school, and

''(B) an agency account of a State university which is described in subparagraph (A) and from

which there is distributed to such faculty members payments forming a part of the compensation that the State, or such State university, as the case may be, agrees to pay to such faculty members, but only if—

''(i) such agency account is authorized by State law and receives the funds for such payments from a faculty practice plan described in section 501(c)(3) of such Code and exempt from tax under section 501(a) of such Code,

''(ii) such payments are distributed by such agency account to such faculty members who render patient care at such medical school, and

''(iii) such faculty members comprise at least 30 percent of the membership of such faculty practice plan, and

''(2) remuneration which is disbursed by such agency account to any such faculty member of the medical school described in paragraph (1)(A) shall be deemed to have been actually disbursed by the State, or such State university, as the case may be, as a common paymaster and not to have been actually disbursed by such agency account.

''(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to remuneration paid after December 31, 1996.''

EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS

For purposes of this chapter, the term ''wages'' shall not include the amount of any refund required under section 421 of Pub. L. 100–360, 42 U.S.C. 1395b note, see section 10202 of Pub. L. 101–239, set out as a note under section 1395b of Title 42, The Public Health and Welfare.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

TREATMENT OF CERTAIN FAMILY SERVICES CARE PROVIDERS

Section 6305 of Pub. L. 100–647 provided that:

''(a) IN GENERAL.—A State may treat a person who renders dependent care or similar services as other than an employee [for] employment tax purposes for the applicable period if all of the following conditions are satisfied with respect to such person for such applicable period:

''(i) The person does not provide any dependent care or similar services in any facility owned or operated by the State.

''(ii) The person is compensated by the State for such services, directly or indirectly, out of funds provided pursuant to chapter 7 of title 42 of the United States Code [42 U.S.C. 301 et seq.], or the provisions and amendments made by the Family Security Act of 1988 [probably means the Family Support Act of 1988, Pub. L. 100–485, see Tables for classification].

''(iii) The State does not treat the person, with respect to the provision of dependent care or similar services, as an employee for employment tax purposes.

''(iv) The State files all Federal income tax returns (including information returns) required to be filed with respect to such person on a basis consistent with the State's treatment of such person as other than an employee beginning on the date of the enactment of this section [Nov. 10, 1988].

''(v) No more than ten percent of the State's employees are provided with insurance under title II of the Social Security Act [42 U.S.C. 401 et seq.] pursuant to voluntary agreements with the Secretary of Health and Human Services under section 218 of such title [42 U.S.C. 418].

''(b) STATE.—For purposes of this section, the term 'State' shall mean the government of the United States, District of Columbia, any State or political subdivision thereof, and any agency or instrumentality of any of the foregoing.

''(c) EMPLOYMENT TAX.—For purposes of this section, the term 'employment tax' means any tax imposed by subtitle C of the Internal Revenue Code of 1986.

''(d) APPLICABLE PERIOD.—For purposes of this section, the term 'applicable period' means the period beginning on January 1, 1984 and ending on December 31, 1990.

''(e) REPORT.—The Secretary of the Treasury shall report to the Senate Committee on Finance and the House Committee on Ways and Means on the text [tax] status of day care providers compensated pursuant to the program described in the section no later than December 31, 1989.''

[The due date for the report referred to in section 6305(e) of Pub. L. 100–647, set out above, extended to Jan. 1, 1992, by Pub. L. 101–508, title XI, § 11831(b), Nov. 5, 1990, 104 Stat. 1388–559.]

CERTAIN EMPLOYER PENSION CONTRIBUTIONS NOT INCLUDED IN FICA WAGE BASE

Section 8018 of Pub. L. 100–647 provided that: ''In the case of any State (within the meaning of section 3121(e)(1) of the Internal Revenue Code of 1986) or political subdivision thereof which received a letter ruling of the Internal Revenue Service issued after December 31, 1983, and before the date of the enactment of this Act [Nov. 10, 1988] maintaining that any amount treated as an employer contribution under section 414(h)(2) of the Internal Revenue Code of 1986 is excluded from the definition of 'wages' for purposes of tax liability under section 3121(v)(1)(B) of such Code, such State or political subdivision shall be relieved of any liability for taxes under such section 3121(v)(1)(B) which, in good faith reliance on such letter ruling, were not paid and which would otherwise have been required to be paid (but for this section) on or before the earlier of the date of the enactment of this Act or the date of the receipt of a notice of revocation from the Internal Revenue Service of such letter ruling.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see

section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

FEDERAL LEGISLATIVE BRANCH EMPLOYEES; EXCLUSION OF CERTAIN RETIREMENT CONTRIBUTIONS FOR PURPOSES OF SUBSECTION (b)(5)(G)

Federal employees not to be deemed subject to Federal retirement system for purposes of subsec. (b)(5)(G) of this section if employees are contributing reduced amounts by reason of Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, see section 2601(c) of Pub. L. 98–369, set out as a note under section 410 of Title 42, The Public Health and Welfare.

SERVICE PERFORMED FOR NONPROFIT ORGANIZATIONS BY FEDERAL EMPLOYEES

For purposes of subsec. (b)(5) of this section as in effect in January 1983 and as in effect on and after January 1, 1984, service performed in the employ of a nonprofit organization described in section 501(c)(3) of this title by an employee who is required by law to be subject to subchapter III of chapter 83 of Title 5, Government Organization and Employees, with respect to such service, is considered to be service performed in the employ of an instrumentality of the United States, see section 2601(e) of Pub. L. 98–369, set out as a note under section 410 of Title 42, The Public Health and Welfare.

REFUNDS TO CHURCHES OR QUALIFIED CHURCH-CONTROLLED ORGANIZATIONS

Section 2603(f) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In any case where a church or qualified church-controlled organization makes an election under section 3121(w) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the Secretary of the Treasury shall refund (without interest) to such church or organization any taxes paid under sections 3101 and 3111 of such Code with respect to service performed after December 31, 1983, which is covered under such election. The refund shall be conditional upon the church or organization agreeing to pay to each employee (or former employee) the portion of the refund attributable to the tax imposed on such employee (or former employee) under section 3101, and such employee (or former employee) may not receive any other refund payment of such taxes.''

SOCIAL SECURITY COVERAGE OF RETIRED FEDERAL JUDGES ON ACTIVE DUTY

Pub. L. 98–118, §4, Oct. 11, 1983, 97 Stat. 803, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Notwithstanding section 101(d) of the Social Security Amendments of 1983 [section 101(d) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note above], the amendments made by section 101(c) of such Act [amending this section and section 409 of Title 42, The Public Health and Welfare] shall apply only with respect to remuneration paid after December 31, 1985. Remuneration paid prior to January 1, 1986, under section 371(b) of title 28, United States Code, to an individual performing service under section 294 of such title, shall not be included in the term ''wages'' for purposes of section 209 of the Social Security Act [42 U.S.C. 409] or section 3121(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].''

TREATMENT OF CERTAIN MEDICAL FACULTY PRACTICE PLANS

Section 125 of Pub. L. 98–21, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—For purposes of subsection (s) of section 3121 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to concurrent employment by 2 or more employers)—

''(1) the following entities shall be deemed to be related corporations:

''(A) a State university which employs health professionals as faculty members at a medical school, and

''(B) a faculty practice plan described in section 501(c)(3) of such Code and exempt from tax under section 501(a) of such Code—

''(i) which employs faculty members of such medical school, and

''(ii) 30 percent or more of the employees of which are concurrently employed by such medical school; and

''(2) remuneration which is disbursed by such faculty practice plan to a health professional employed by both such entities shall be deemed to have been actually disbursed by such university as a common paymaster and not to have been actually disbursed by such faculty practice plan.

''(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to remuneration paid after December 31, 1983.''

WAIVER OF EXEMPTION BY NONPROFIT ORGANIZATION; TERMINATION OF CERTIFICATE PERIOD ON OR AFTER MARCH 31, 1983, PROHIBITED

Section 102(d) of Pub. L. 98–21, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The period for which a certificate is in effect under section 3121(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] may not be terminated under paragraph (1)(D) or (2) thereof on or after March 31, 1983; but no such certificate shall be effective with respect to any service to which the amendments made by this section [amending this section and section 410 of Title 42, The Public Health and Welfare] apply.''

PAYMENTS UNDER STATE TEMPORARY DISABILITY LAW TO BE TREATED AS REMUNERATION FOR SERVICE

Section 3(e) of Pub. L. 97–123, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of applying section 209 of the Social Security Act [section 409 of Title 42, The Public Health and Welfare], section 3121(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and section 3231(e) of such Code with respect to the parenthetical matter contained in section 209(b)(2) of the Social Security Act or section 3121(a)(2)(B) of the Internal Revenue Code of 1986, or with respect to section 3231(e)(4) of such Code (as the case may be), payments under a State temporary disability law shall be treated as remuneration for service.''

WAIVER OF EXEMPTION FROM SOCIAL SECURITY TAXES BY CERTAIN ORGANIZATIONS

Pub. L. 96–605, title IV, §401, Dec. 28, 1980, 94 Stat. 3531, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) WAIVER CERTIFICATE.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, any waiver certificate filed by a qualified corporation (hereinafter in this section referred to as the 'corporation') under section 3121(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to waiver of exemption from social security taxes by certain organizations) shall be deemed not to be effective, for purposes of the taxes imposed by section 3101 of such Code, with respect to any wages—

''(A) paid by the Corporation to any employee thereof after December 31, 1972, and before April 1, 1975, if the Corporation furnishes to the Secretary of the Treasury or his delegate evidence reasonably satisfactory to him that the Corporation as refunded, prior to February 1, 1977, to such employee (or to his survivors or estate) the full amount of the taxes imposed by section 3101 of such Code on such wages, or

''(B) paid after March 31, 1975, and prior to July 1, 1977, by the Corporation to an individual as an employee of the Corporation, if the Corporation furnishes to the Secretary of the Treasury or his delegate evidence reasonably satisfactory to him that (i) such individual was not an employee of the Corporation on June 30, 1978, and (ii) no amount of the

taxes imposed by section 3101 of such Code on such wages were withheld by the Corporation from such wages.

''(2) APPLICATION OF PARAGRAPH (1).—

''(A) EVIDENCE TO BE SUBMITTED TO SECRETARY.—The provisions of paragraph (1) shall not apply to wages described in subparagraph (A) or (B) of such paragraph unless, prior to the close of the one-year period which begins on the date of the enactment of this Act [Dec. 28, 1980], the Corporation furnishes to the Secretary of the Treasury or his delegate the evidence referred to in either such subparagraph.

''(B) TAX NOT IMPOSED.—If the provisions of paragraph (1) apply with respect to any wages paid by the Corporation to an employee thereof, no taxes imposed on such wages by section 3101 of the Internal Revenue Code of 1986 shall be payable, and no interest or penalty with respect to the imposition of taxes by such section on such wages (or with respect to the imposition of taxes by such section or section 3111 of such Code on any wages paid by the Corporation prior to January 1, 1978) shall be imposed or collected.

''(C) CREDIT AGAINST TAX.—Under regulations prescribed by the Secretary, there shall be allowed as a one-time credit against the tax imposed on the Corporation under section 3101 or 3111 of the Internal Revenue Code of 1986 (and any interest or penalties imposed thereon) an amount equal to the sum of—

''(i) all amounts of tax imposed by section 3101 of such Code which have been paid by the Corporation with respect to wages to which paragraph (1) applies, and

''(ii) all amounts paid by such Corporation as a penalty or as interest with respect to the tax imposed by section 3101 or 3111 of such Code on such wages.

''(b) TREATMENT FOR PURPOSES OF SOCIAL SECURITY ACT.—In the administration of titles II and XVIII of the Social Security Act [42 U.S.C. 401 et seq. and 1395 et seq.], any wages paid to any individual to which the provisions of subsection (a) apply shall be treated as wages (within the meaning of section 209 of such Act) [42 U.S.C. 409] for purposes of determining—

''(1) entitlement to, or amount of, any insurance benefit payable to such individual or any other person on the basis of the wages and self-employment income of such individual, or

''(2) entitlement of such individual to benefits under title XVIII of such Act [42 U.S.C. 1395 et seq.] or entitlement of any other person to such benefits on the basis of the wages and self-employment income of such individual.

''(c) QUALIFIED CORPORATION DEFINED.—For purposes of this section, the term 'qualified corporation' means any corporation which—

''(1) filed a waiver certificate under section 3121 of the Internal Revenue Code of 1986 during 1968;

''(2) filed a second waiver certificate under such section during 1975 believing that no other waiver certificate had been filed;

''(3) received a refund of the taxes imposed by sections 3101 and 3111 of such Code with respect to certain wages paid to more than 120 but less than 180 employees who did not concur in the filing of the second waiver certificate; and

''(4) was notified during 1977 by the Internal Revenue Service that the certificate had been filed during 1968.

''(d) LIABILITY FOR TAXES.—Except as provided in subsection (a)(2)(C)(ii), nothing in this section shall be construed to relieve the Corporation of any liability for the payment of the taxes imposed by section 3111 of the Internal Revenue Code of 1986 with respect to any wages paid by it to any individual for any period.''

REFUND OR CREDIT OF TAXES TO NONPROFIT ORGANIZATIONS AFTER SEPT. 9, 1976, ON TAXES PAID UNDER SECTIONS 3101 OR 3111; PROHIBITION; CONSTRUCTIVE FILING OF CERTIFICATE

Section 2 of Pub. L. 94–563, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Notwithstanding any other provision of law, no refund or credit of any tax paid under section 3101 or 3111 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by an organization described in section 501(c)(3) of such Code which is exempt from income tax under section 501(a) of such Code shall be made on or after September 9, 1976, by reason of such organization's failure to file a waiver certificate under section 3121(k)(1) of such Code (or the corresponding provision of prior law), if such organization is deemed to have filed such a certificate under section 3121(k)(4) of such Code (as added by the first section of this Act).''

REMUNERATION FOR SERVICES DEEMED TO CONSTITUTE EMPLOYMENT; SERVICES FOR ORGANIZATIONS DEEMED TO HAVE FILED CERTIFICATES UNDER SUBSECTION (k)(4) OF THIS SECTION

Section 312(c) of Pub. L. 95–216, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In any case where—

''(1) an individual performed service, as an employee of an organization which is deemed under section 3121(k)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to have filed a waiver certificate under section 3121(k)(1) of such Code, on or after the first day of the applicable period described in subparagraph (A)(ii) of such section 3121(k)(4) and before July 1, 1977; and

''(2) the service so performed does not constitute employment (as defined in section 210(a) of the Social Security Act [42 U.S.C. 410(a)] and section 3121(b) of such Code) because the waiver certificate which the organization is deemed to have filed is made inapplicable to such service by section 3121(k)(4)(C) of such Code, but would constitute employment (as so defined) in the absence of such section 3121(k)(4)(C),

the remuneration paid for such service shall, upon the request of such individual (filed on or before April 15, 1980, in such manner and form, and with such official, as may be prescribed by regulations made under title II of the Social Security Act [42 U.S.C. 401 et seq.]) accompanied by full payment of all of the taxes which would have been paid under section 3101 of such Code with respect to such remuneration but for such section 3121(k)(4)(C) (or by satisfactory evidence that appropriate arrangements have been made for the payment of such taxes in installments as provided in section 3121(k)(8) of such Code), be deemed to constitute remuneration for employment as so defined. In any case where remuneration paid by an organization to an individual is deemed under the preceding sentence to constitute remuneration for employment, such organization shall be liable (notwithstanding any other provision of such Code) for payment of the taxes which it would have been required to pay under section 3111 of such Code with respect to such remuneration in the absence of such section 3121(k)(4)(C).''

REMUNERATION FOR SERVICES DEEMED TO CONSTITUTE EMPLOYMENT; SERVICES FOR ORGANIZATIONS DEEMED TO HAVE FILED CERTIFICATES UNDER SUBSECTION (k)(5) OF THIS SECTION

Section 3 of Pub. L. 94–563, as amended by Pub. L. 95–216, title III, § 312(e), Dec. 20, 1977, 91 Stat. 1535; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In any case where—

''(1) an individual performed service, as an employee of an organization which is deemed under section 3121(k)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to have filed a waiver certifi-

cate under section 3121(k)(1) of such Code, at any time prior to the period for which such certificate is effective;

''(2) the taxes imposed by sections 3101 and 3111 of such Code were paid with respect to remuneration paid for such service, but such service (or any part thereof) does not constitute employment (as defined in section 210(a) of the Social Security Act [42 U.S.C. 410(a)] and section 3121(b) of such Code because the applicable taxes so paid were refunded or credited (otherwise than through a refund or credit which would have been allowed if a valid waiver certificate filed under section 3121(k)(1) of such Code had been in effect) prior to September 9, 1976; and

''(3) any portion of such service (with respect to which taxes were paid and refunded or credited as described in paragraph (2)) would constitute employment (as so defined) if the organization had actually filed under section 3121(k)(1) of such Code a valid waiver certificate effective as provided in section 3121(k)(5)(B) thereof (with such individual's signature appearing on the accompanying list),

the remuneration paid for the portion of such service described in paragraph (3) shall, upon the request of such individual (filed on or before April 15, 1980, in such manner and form, and with such official, as may be prescribed by regulations made under title II of the Social Security Act [42 U.S.C. 401 et seq.]) accompanied by full repayment of the taxes which were paid under section 3101 of such Code with respect to such remuneration and so refunded or credited (or by satisfactory evidence that appropriate arrangements have been made for the repayment of such taxes in installments as provided in section 3121(k)(8) of such Code), be deemed to constitute remuneration for employment as so defined. In any case where remuneration paid by an organization to an individual is deemed under the preceding sentence to constitute remuneration for employment, such organization shall be liable (notwithstanding any other provision of such Code) for repayment of any taxes which it paid under section 3111 of such Code with respect to such remuneration and which were refunded or credited to it.''

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS PRIOR TO FILING OF WAIVER CERTIFICATE

Section 105(b)(1)–(5) of Pub. L. 86–778, as amended by Pub. L. 89–97, title III, §316(c)(1), July 30, 1965, 79 Stat. 386; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) If—

''(A) an individual performed service in the employ of an organization with respect to which remuneration was paid before the first day of the calendar quarter in which the organization filed a waiver certificate pursuant to section 3121(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and such service is excepted from employment under section 210(a)(8)(B) of the Social Security Act [42 U.S.C. 410(a)(8)(B)],

''(B) such service would have constituted employment as defined in section 210 of such Act [42 U.S.C. 410] if the requirements of section 3121(k)(1) of such Code were satisfied,

''(C) such organization paid, on or before the due date of the tax return for the calendar quarter before the calendar quarter in which the organization filed a certificate pursuant to section 3121(k)(1) of such Code, any amount, as taxes imposed by sections 3101 and 3111 of such Code with respect to such remuneration paid by the organization to the individual for such service,

''(D) such individual, or a fiduciary acting for such individual or his estate, or his survivor (within the meaning of section 205(c)(1)(C) of such Act [42 U.S.C. 405(c)(1)(C)]), requests that such remuneration be deemed to constitute remuneration for employment for purposes of title II of such Act [42 U.S.C. 401 et seq.], and

''(E) the request is made in such form and manner, and with such official, as may be prescribed by regulations made by the Secretary of Health, Education, and Welfare,

then, subject to the conditions stated in paragraphs (2), (3), (4), and (5), the remuneration with respect to which the amount has been paid as taxes shall be deemed to constitute remuneration for employment for purposes of title II of such Act [42 U.S.C. 401 et seq.].

''(2) Paragraph (1) shall not apply with respect to an individual unless the organization referred to in paragraph (1)(A), on or before the date on which the request described in paragraph (1) is made, has filed a certificate pursuant to section 3121(k)(1) of such Code.

''(3) Paragraph (1) shall not apply with respect to an individual who is employed by the organization referred to in paragraph (2) on the date the certificate is filed.

''(4) If credit or refund of any portion of the amount referred to in paragraph (1)(C) (other than a credit or refund which would be allowed if the service constituted employment for purposes of chapter 21 of such Code) has been obtained, paragraph (1) shall not apply with respect to the individual unless the amount credited or refunded (including any interest under section 6611 of such Code) is repaid before January 1, 1968, or, if later, the first day of the third year after the year in which the organization filed a certificate pursuant to section 3121(k)(1) of such Code.

''(5) Paragraph (1) shall not apply to any service performed for the organization in a period for which a certificate filed pursuant to section 3121(k)(1) of such Code is not in effect.''

[Pub. L. 89–97, title III, §316(c)(2), July 30, 1965, 79 Stat. 387, provided that: ''The amendment made by paragraph (1) [amending section 105(b) of Pub. L. 86–778, set out above] shall take effect on the date of the enactment of this Act [July 30, 1965]. The provisions of section 105(b) of the Social Security Amendments of 1960 [section 105(b) of Pub. L. 86–778] which were in effect before the date of the enactment of this Act [July 30, 1965] shall be applicable with respect to any request filed under section 105(b)(1) of such Amendments before such date. Nothing in the preceding sentence shall prevent the filing of a request under section 105(b)(1) of such Amendments as amended by this Act.'']

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS FOR WHICH REMUNERATION WAS PAID BEFORE JULY 30, 1965, BUT AFTER FILING OF WAIVER CERTIFICATE

Section 316(d) of Pub. L. 89–97 provided that where an individual performed service for which remuneration was paid before July 30, 1965, by an organization which, before such date, filed a waiver certificate pursuant to subsec. (k)(1) of this section, then under certain conditions, the remuneration paid with respect to such service was to be deemed remuneration for employment for purposes of title II of the Social Security Act, sections 401 et seq, of Title 42, The Public Health and Welfare, even though normally excluded from employment under title II of the Social Security Act.

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS PERFORMED AFTER 1950 AND PRIOR TO JULY 1, 1960

Section 105(b)(1)–(5) of Pub. L. 86–778 provided that where an individual performed service in the employ of an organization after 1950 with respect to which remuneration was paid before 1960 and such service is normally excepted from employment under title II of the Social Security Act (42 U.S.C. 401 et seq.), then under certain conditions, the remuneration paid with respect to such service was to be deemed remuneration for employment for purposes of title II of the Social Security Act.

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS PERFORMED AFTER 1950 AND PRIOR TO 1957

Section 403 of act Sept. 1, 1954, as amended by acts Aug. 1, 1956, ch. 836, title IV, §401, 70 Stat. 855; Aug. 27, 1958, Pub. L. 85–785, §§1–3, 72 Stat. 938, provided that where an individual has been employed after 1950 and

before Aug. 1, 1956, by an organization exempt from income tax under section 501(c)(3) of this title but which did not have in effect during the individual's period of employment a valid waiver certificate, or, which failed to have the individual's signature appear on the list of signatures of employees who concurred in the filing of such certificate, where one was in effect, and the service performed by the individual would have constituted employment for purposes of title II of the Social Security Act (42 U.S.C. 401 et seq.) had such requirements been met, then under certain conditions, the remuneration paid was to be deemed remuneration for employment for purposes of title II of the Social Security Act.

§ 3122. Federal service

In the case of the taxes imposed by this chapter with respect to service performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, including such service which is medicare qualified government employment (as defined in section 3121(u)(3)), including service, performed as a member of a uniformed service, to which the provisions of section 3121(m)(1) are applicable, and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable, the determination of the amount of remuneration for such service, and the return and payment of the taxes imposed by this chapter, shall be made by the head of the Federal agency or instrumentality having the control of such service, or by such agents as such head may designate. In the case of the taxes imposed by this chapter with respect to service performed in the employ of an international organization pursuant to a transfer to which the provisions of section 3121(y) are applicable, the determination of the amount of remuneration for such service, and the return and payment of the taxes imposed by this chapter, shall be made by the head of the Federal agency from which the transfer was made. Nothing in this paragraph shall be construed to affect the Secretary's authority to determine under subsections (a) and (b) of section 3121 whether any such service constitutes employment, the periods of such employment, and whether remuneration paid for any such service constitutes wages. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to such service without regard to the contribution and benefit base limitation in section 3121(a)(1), and he shall not be required to obtain a refund of the tax paid under section 3111 on that part of the remuneration not included in wages by reason of section 3121(a)(1). Payments of the tax imposed under section 3111 with respect to service, performed by an individual as a member of a uniformed service, to which the provisions of section 3121(m)(1) are applicable, shall be made from appropriations available for the pay of members of such uniformed service. The provisions of this section shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of this section the Secretary of Defense shall be deemed to be the head of such instrumentality. The provisions of this section shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of the Department in which the Coast Guard is operating, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of this section the Secretary of the Department in which the Coast Guard is operating shall be deemed to be the head of such instrumentality.

(Aug. 16, 1954, ch. 736, 68A Stat. 428; Sept. 1, 1954, ch. 1206, title II, §§ 202(c), 203(a), 68 Stat. 1090; Aug. 1, 1956, ch. 837, title IV, § 411(b), (c), 70 Stat. 879; Pub. L. 85–840, title IV, § 402(c), Aug. 28, 1958, 72 Stat. 1042; Pub. L. 85–866, title I, § 70, Sept. 2, 1958, 72 Stat. 1660; Pub. L. 87–293, title II, § 202(a)(3), Sept. 22, 1961, 75 Stat. 626; Pub. L. 89–97, title III, § 320(b)(3), July 30, 1965, 79 Stat. 393; Pub. L. 90–248, title I, § 108(b)(3), Jan. 2, 1968, 81 Stat. 835; Pub. L. 92–5, title II, § 203(b)(3), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92–236, § 203(b)(3), July 1, 1972, 86 Stat. 419; Pub. L. 93–66, § 203(b)(3), (d), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, § 5(b)(3), (d), Dec. 31, 1973, 87 Stat. 954; Pub. L. 94–455, title XIX, § 1903(a)(4), Oct. 4, 1976, 90 Stat. 1807; Pub. L. 97–248, title II, § 278(a)(3), Sept. 3, 1982, 96 Stat. 560; Pub. L. 99–272, title XIII, § 13205(a)(2)(C), Apr. 7, 1986, 100 Stat. 315; Pub. L. 100–647, title VIII, § 8015(a)(2), Nov. 10, 1988, 102 Stat. 3791; Pub. L. 101–508, title XI, § 11331(d)(2), Nov. 5, 1990, 104 Stat. 1388–468; Pub. L. 103–66, title XIII, § 13207(d)(4), Aug. 10, 1993, 107 Stat. 468; Pub. L. 103–296, title III, § 319(a)(2), Aug. 15, 1994, 108 Stat. 1534; Pub. L. 109–241, title IX, § 902(i), July 11, 2006, 120 Stat. 567.)

REFERENCES IN TEXT

The Peace Corps Act, referred to in text, is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

AMENDMENTS

2006—Pub. L. 109–241 substituted ''Secretary of the Department in which the Coast Guard is operating'' for ''Secretary of Transportation'' in two places.

1994—Pub. L. 103–296 inserted after first sentence ''In the case of the taxes imposed by this chapter with respect to service performed in the employ of an international organization pursuant to a transfer to which the provisions of section 3121(y) are applicable, the determination of the amount of remuneration for such service, and the return and payment of the taxes imposed by this chapter, shall be made by the head of the Federal agency from which the transfer was made.''

1993—Pub. L. 103–66 substituted ''contribution and benefit base limitation'' for ''applicable contribution base limitation''.

1990—Pub. L. 101–508 substituted ''applicable contribution base limitation'' for ''contribution and benefit base limitation''.

1988—Pub. L. 100–647 struck out from first sentence ''the determination whether an individual has performed service which constitutes employment as defined in section 3121(b),'' after ''section 3121(p) are applicable,'' and ''which constitutes wages as defined in section 3121(a)'' after ''remuneration for such service'', and inserted after first sentence ''Nothing in this paragraph shall be construed to affect the Secretary's authority to determine under subsections (a) and (b) of section 3121 whether any such service constitutes employment, the periods of such employment, and whether remuneration paid for any such service constitutes wages.''

1986—Pub. L. 99–272 substituted ''including such service which is medicare qualified government employment (as defined in section 3121(u)(3))'' for ''including service which is medicare qualified Federal employment (as defined in section 3121(u)(2))''.

1982—Pub. L. 97–248 inserted ''including service which is medicare qualified Federal employment (as defined in section 3121(u)(2)),''.

1976—Pub. L. 94–455 substituted ''Secretary of Transportation'' for ''Secretary'' in two places.

1973—Pub. L. 93–233, § 5(b)(3), effective with respect to remuneration paid after 1973, substituted ''$13,200'' for ''$12,600''.

Pub. L. 93–233, § 5(d), applicable only with respect to remuneration paid after, and taxable year beginning after, 1973 (as provided in section 5(e) of Pub. L. 93–233, set out as a note under section 409 of Title 42), amended section 203(b)(3)(C) of Pub. L. 92–336 (set out as 1973 Amendment note hereunder) substituting ''$13,200'' for ''$12,600''.

Pub. L. 93–66, § 203(b)(3), effective with respect to remuneration paid after 1973, substituted ''$12,600'' for ''$12,000''.

Pub. L. 93–66, § 203(d), applicable only with respect to remuneration paid after, and taxable years beginning after, 1973 (as provided in section 203(e) of Pub. L. 93–66, set out as a note under section 409 of Title 42), amended section 203(b)(3)(C) of Pub. L. 92–336 (set out as 1972 Amendment note hereunder) substituting ''$12,600'' for ''$12,000''.

1972—Pub. L. 92–336, § 203(b)(3)(A), substituted ''$10,800'' for ''$9,000''.

Pub. L. 92–336, § 203(b)(3)(B), effective with respect to remuneration paid after 1973, substituted ''$12,000'' for ''$10,800''.

Pub. L. 92–336, § 203(b)(3)(C), effective with respect to remuneration paid after 1974, substituted ''contribution and benefit base'' for ''$12,000''.

1971—Pub. L. 92–5 substituted ''$9,000'' for ''$7,800''.

1968—Pub. L. 90–248 substituted ''$7,800'' for ''$6,600'' in second sentence.

1965—Pub. L. 89–97 substituted ''$6,600'' for ''$4,800''.

1961—Pub. L. 87–293 inserted ''and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable,'' after ''section 3121(m)(1) are applicable,''.

1958—Pub. L. 85–866 substituted ''section'' for ''subsection'' wherever appearing.

Pub. L. 85–840 substituted ''$4,800'' for $4,200''.

1956—Act Aug. 1, 1956, included taxes with respect to service, performed as a member of a uniformed service, to which provisions of section 3121(m)(1) of this title are applicable, and authorized payment of tax imposed under section 3111 of this title from appropriations available for pay of members of the uniformed service.

1954—Act Sept. 1, 1954, § 202(c), substituted ''$4,200'' for ''$3,600''.

Act Sept. 1, 1954, § 203(a), inserted provisions making section applicable to services performed by a civilian employee in the Coast Guard Exchanges or certain other activities at Coast Guard installations.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 applicable with respect to service performed after calendar quarter following calendar quarter in which Aug. 15, 1994, occurs, see section 319(c) of Pub. L. 103–296, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to 1994 and later calendar years, see section 13207(e) of Pub. L. 103–66, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to 1991 and later calendar years, see section 11331(e) of Pub. L. 101–508, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8015(a)(3) of Pub. L. 100–647 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 405 of Title 42, The Public Health and Welfare] shall apply to determinations relating to service commenced in any position on or after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 applicable to services performed after Mar. 31, 1986, see section 13205(d)(1) of Pub. L. 99–272, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to remuneration paid after Dec. 31, 1982, see section 278(c)(1) of Pub. L. 97–248, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to wages paid after Dec. 31, 1976, see section 1903(d) of Pub. L. 94–455, set out as a note under section 3101 of this title.

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of Title 42.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–336 applicable only with respect to remuneration paid after December 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable only with respect to remuneration paid after December 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 applicable only with respect to remuneration paid after December 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–97 applicable with respect to remuneration paid after December, 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–293 applicable with respect to service performed after Sept. 22, 1961, but in the case

of persons serving under the Peace Corps agency established by executive order applicable with respect to service performed on or after the effective date of enrollment, see section 202(c) of Pub. L. 87–293, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–840 applicable only with respect to remuneration paid after 1958, see section 402(e) of Pub. L. 85–840, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, effective Jan. 1, 1956, see section 603(a) of act Aug. 1, 1956.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 202(c) of act Sept. 1, 1954, applicable only with respect to remuneration paid after 1954, see section 202(d) of act Sept. 1, 1954, set out as a note under section 1401 of this title.

Section 203(b) of act Sept. 1, 1954, provided that: ''The amendment made by subsection (a) [amending this section] shall become effective January 1, 1955.''

REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENT UNAFFECTED

Section 202(a)(3) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under section 2515 of Title 22, Foreign Relations and Intercourse.

§ 3123. Deductions as constructive payments

Whenever under this chapter or any act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

(Aug. 16, 1954, ch. 736, 68A Stat. 429.)

§ 3124. Estimate of revenue reduction

The Secretary at intervals of not longer than 3 years shall estimate the reduction in the amount of taxes collected under this chapter by reason of the operation of section 3121(b)(9) and shall include such estimate in his annual report.

(Aug. 16, 1954, ch. 736, 68A Stat. 429; Sept. 1, 1954, ch. 1206, title II, § 205(b), 68 Stat. 1091; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1954—Act Sept. 1, 1954, substituted ''section 3121(b)(9)'' for ''section 3121(b)(10)''.

§ 3125. Returns in the case of governmental employees in States, Guam, American Samoa, and the District of Columbia

(a) States

Except as otherwise provided in this section, in the case of the taxes imposed by sections 3101(b) and 3111(b) with respect to service performed in the employ of a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby), the return and payment of such taxes may be made by the head of the agency or instrumentality having the control of such service, or by such agents as such head may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the contribution and benefit base limitation in section 3121(a)(1).

(b) Guam

The return and payment of the taxes imposed by this chapter on the income of individuals who are officers or employees of the Government of Guam or any political subdivision thereof or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, and those imposed on such Government or political subdivision or instrumentality with respect to having such individuals in its employ, may be made by the Governor of Guam or by such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the contribution and benefit base limitation in section 3121(a)(1).

(c) American Samoa

The return and payment of the taxes imposed by this chapter on the income of individuals who are officers or employees of the Government of American Samoa or any political subdivision thereof or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, and those imposed on such Government or political subdivision or instrumentality with respect to having such individuals in its employ, may be made by the Governor of American Samoa or by such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the contribution and benefit base limitation in section 3121(a)(1).

(d) District of Columbia

In the case of the taxes imposed by this chapter with respect to service performed in the employ of the District of Columbia or in the employ of any instrumentality which is wholly owned thereby, the return and payment of the taxes may be made by the Mayor of the District of Columbia or such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed by section 3111 with respect to such service without regard to the contribution and benefit base limitation in section 3121(a)(1).

(Added Pub. L. 86–778, title I, §103(q)(1), Sept. 13, 1960, 74 Stat. 939; amended Pub. L. 89–97, title III, §§317(c)(1), (2), 320(b)(4), July 30, 1965, 79 Stat. 389, 393; Pub. L. 90–248, title I, §108(b)(4), Jan. 2, 1968, 81 Stat. 835; Pub. L. 92–5, title II, §203(b)(4), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92–336, title II, §203(b)(4), July 1, 1972, 86 Stat. 419; Pub. L. 93–66, title II, §203(b)(4), (d), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, §5(b)(4), (d), Dec. 31, 1973, 87 Stat. 954; Pub. L. 94–455, title XIX, §1903(a)(5), Oct. 4, 1976, 90 Stat. 1807; Pub. L. 99–272, title XIII, §13205(a)(2)(A)(i), (ii), Apr. 7, 1986, 100 Stat. 315; Pub. L. 101–508, title XI, §11331(d)(2), Nov. 5, 1990, 104 Stat. 1388–468; Pub. L. 103–66, title XIII, §13207(d)(4), Aug. 10, 1993, 107 Stat. 468.)

PRIOR PROVISIONS

A prior section 3125 was renumbered section 3128 of this title.

AMENDMENTS

1993—Pub. L. 103–66 which directed the amendment of this section by substituting ''contribution and benefit base limitation'' for ''applicable contribution base limitation'' without specifying where the substitution was to be made, was executed by making the substitution in subsecs. (a) to (d) to reflect the probable intent of Congress.

1990—Pub. L. 101–508 substituted ''applicable contribution base limitation'' for ''contribution and benefit base limitation'' in subsecs. (a) to (d).

1986—Pub. L. 99–272 inserted ''States'' in section catchline, added subsec. (a), and redesignated former subsecs. (a) to (c) as (b) to (d), respectively.

1976—Subsec. (c). Pub. L. 94–455 substituted ''Mayor of the District of Columbia or such agents as he may designate'' for ''Commissioners of the District of Columbia or such agents as they may designate''.

1973—Pub. L. 93–233, §5(b)(4), effective with respect to remuneration paid after 1973, substituted ''$13,200'' for ''$12,600'' wherever appearing.

Pub. L. 93–233, §5(d), applicable only with respect to remuneration paid after, and taxable years beginning after, 1973 (as provided in section 5(e) of Pub. L. 93–233, set out as a note under section 409 of Title 42), amended section 203(b)(4)(C) of Pub. L. 92–336 (set out as 1973 Amendment note hereunder) substituting ''$13,200'' for ''$12,600''.

Pub. L. 93–66, §203(b)(4), effective with respect to remuneration paid after 1973, substituted ''$12,600'' for ''$12,000'' wherever appearing.

Pub. L. 93–66, §203(d), applicable only with respect to remuneration paid after, and taxable years beginning after, 1973 (as provided in section 203(e) of Pub. L. 93–66, set out as a note under section 409 of Title 42), amended section 203(b)(4)(C) of Pub. L. 92–336 (set out as 1972 Amendment note hereunder) substituting ''$12,600'' for ''$12,000''.

1972—Pub. L. 92–336, §203(b)(4)(A), substituted ''$10,800'' for ''$9,000'' wherever appearing.

Pub. L. 92–336, §203(b)(4)(B), effective with respect to remuneration paid after 1973, substituted ''$12,000'' for ''$10,800'' wherever appearing.

Pub. L. 92–336, §203(b)(4)(C), effective with respect to remuneration paid after 1974, substituted ''contribution and benefit base'' for ''$12,000''.

1971—Pub. L. 92–5 substituted ''$9,000'' for ''$7,800'' wherever appearing.

1968—Pub. L. 90–248 substituted ''$7,800'' for ''$6,600'' wherever appearing.

1965—Subsecs. (a), (b). Pub. L. 89–97, §320(b)(4), substituted ''$6,600'' for ''$4,800''.

Subsec. (c). Pub. L. 89–97, §317(c)(1), added subsec. (c) and inserted reference to District of Columbia in section catchline.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to 1994 and later calendar years, see section 13207(e) of Pub. L. 103–66, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to 1991 and later calendar years, see section 11331(e) of Pub. L. 101–508, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 applicable to services performed after Mar. 31, 1986, see section 13205(d)(1) of Pub. L. 99–272, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of Title 42.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–336 applicable only with respect to remuneration paid after December 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable only with respect to remuneration paid after December 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 applicable only with respect to remuneration paid after December 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 317(c)(1), (2) of Pub. L. 89–97 applicable with respect to services performed after quarter ending September 30, 1965, and after quarter in which Secretary of the Treasury receives a certification from Commissioners of District of Columbia expressing their desire to have insurance system established by section 401 et seq. and 1395c et seq. of Title 42, The Public Health and Welfare, extended to officers and employees coming under provisions of such amendments, see section 317(g) of Pub. L. 89–97, set out as a note under section 410 of Title 42.

Amendment by section 320(b)(4) of Pub. L. 89–97 applicable with respect to remuneration paid after December 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of this title.

EFFECTIVE DATE

Section applicable only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by title II of the Social Security Act (42 U.S.C. 401 et seq.) extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system

established by title II of the Social Security Act extended to the officers and employees of such Government and such political subdivisions and instrumentalities, see section 103(v)(1) of Pub. L. 86–778, set out as an Effective Date of 1960 Amendment note under section 402 of Title 42, The Public Health and Welfare.

§ 3126. Return and payment by governmental employer

If the employer is a State or political subdivision thereof, or an agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages under section 3101 and the amount of the tax imposed by section 3111 may be made by any officer or employee of such State or political subdivision or such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose.

(Added Pub. L. 99–509, title IX, § 9002(a)(1), Oct. 21, 1986, 100 Stat. 1970.)

PRIOR PROVISIONS

A prior section 3126 was renumbered section 3128 of this title.

EFFECTIVE DATE

Section, except as otherwise provided, effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of Title 42, The Public Health and Welfare, see section 9002(d) of Pub. L. 99–509, set out as an Effective Date of 1986 Amendment note under section 418 of Title 42.

§ 3127. Exemption for employers and their employees where both are members of religious faiths opposed to participation in Social Security Act programs

(a) In general

Notwithstanding any other provision of this chapter (and under regulations prescribed to carry out this section), in any case where—

(1) an employer (or, if the employer is a partnership, each partner therein) is a member of a recognized religious sect or division thereof described in section 1402(g)(1) and an adherent of established tenets or teachings of such sect or division as described in such section, and has filed and had approved under subsection (b) an application (in such form and manner, and with such official, as may be prescribed by such regulations) for an exemption from the taxes imposed by section 3111, and

(2) an employee of such employer who is also a member of such a religious sect or division and an adherent of its established tenets or teachings has filed and had approved under subsection (b) an identical application for exemption from the taxes imposed by section 3101,

such employer shall be exempt from the taxes imposed by section 3111 with respect to wages paid to each of the employees thereof who meets the requirements of paragraph (2) and each such employee shall be exempt from the taxes imposed by section 3101 with respect to such wages paid to him by such employer.

(b) Approval of application

An application for exemption filed by an employer (or a partner) under subsection (a)(1) or by an employee under subsection (a)(2) shall be approved only if—

(1) such application contains or is accompanied by the evidence described in section 1402(g)(1)(A) and a waiver described in section 1402(g)(1)(B),

(2) the Commissioner of Social Security makes the findings (with respect to such sect or division) described in section 1402(g)(1)(C), (D), and (E), and

(3) no benefit or other payment referred to in section 1402(g)(1)(B) became payable (or, but for section 203 or 222(b)[1] of the Social Security Act, would have become payable) to the individual filing the application at or before the time of such filing.

(c) Effective period of exemption

An exemption granted under this section to any employer with respect to wages paid to any of the employees thereof, or granted to any such employee, shall apply with respect to wages paid by such employer during the period—

(1) commencing with the first day of the first calendar quarter, after the quarter in which such application is filed, throughout which such employer (or, if the employer is a partnership, each partner therein) or employee meets the applicable requirements specified in subsections (a) and (b), and

(2) ending with the last day of the calendar quarter preceding the first calendar quarter thereafter in which (A) such employer (or, if the employer is a partnership, any partner therein) or the employee involved does not meet the applicable requirements of subsection (a), or (B) the sect or division thereof of which such employer (or, if the employer is a partnership, any partner therein) or employee is a member is found by the Commissioner of Social Security to have ceased to meet the requirements of subsection (b)(2).

(Added Pub. L. 100–647, title VIII, § 8007(a)(1), Nov. 10, 1988, 102 Stat. 3781; amended Pub. L. 101–239, title X, § 10204(b)(1), Dec. 19, 1989, 103 Stat. 2474; Pub. L. 103–296, title I, § 108(h)(3), Aug. 15, 1994, 108 Stat. 1487.)

REFERENCES IN TEXT

Sections 203 and 222(b) of the Social Security Act, referred to in subsec. (b)(3), are classified to sections 403 and 422(b), respectively, of Title 42, The Public Health and Welfare. Section 222(b) was repealed by Pub. L. 106–170, title I, § 101(b)(1)(C), Dec. 17, 1999, 113 Stat. 1873.

PRIOR PROVISIONS

A prior section 3127 was renumbered section 3128 of this title.

AMENDMENTS

1994—Subsecs. (b)(2), (c)(2). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services''.

1989—Subsec. (a). Pub. L. 101–239, § 10204(b)(1)(B), substituted ''the employees thereof'' for ''his employees'' in concluding provisions.

Subsec. (a)(1). Pub. L. 101–239, § 10204(b)(1)(A), inserted ''(or, if the employer is a partnership, each partner therein)'' after ''an employer''.

[1] See References in Text note below.

Subsec. (b). Pub. L. 101–239, § 10204(b)(1)(C), inserted ''(or a partner)'' after ''an employer'' in introductory provisions.

Subsec. (c). Pub. L. 101–239, § 10204(b)(1)(D), substituted ''the employees thereof'' for ''his employees'' in introductory provisions.

Subsec. (c)(1). Pub. L. 101–239, § 10204(b)(1)(E), inserted ''(or, if the employer is a partnership, each partner therein)''.

Subsec. (c)(2). Pub. L. 101–239, § 10204(b)(1)(F), substituted ''such employer (or, if the employer is a partnership, any partner therein) or the employee involved does not meet'' for ''such employer or the employee involved ceases to meet'' in cl. (A) and inserted ''(or, if the employer is a partnership, any partner therein)'' after ''such employer'' in cl. (B).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10204(b)(2) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section] shall be effective as if they were included in the amendments made by section 8007(a)(1) of the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3781) [Pub. L. 100–647].''

EFFECTIVE DATE

Section applicable to wages paid after Dec. 31, 1988, see section 8007(d) of Pub. L. 100–647, set out as an Effective Date of 1988 Amendment note under section 1402 of this title.

§ 3128. Short title

This chapter may be cited as the ''Federal Insurance Contributions Act.''

(Aug. 16, 1954, ch. 736, 68A Stat. 429, § 3125; renumbered § 3126, Pub. L. 86–778, title I, § 103(q)(1), Sept. 13, 1960, 74 Stat. 939; renumbered § 3127, Pub. L. 99–509, title IX, § 9002(a)(1), Oct. 21, 1986, 100 Stat. 1970; renumbered § 3128, Pub. L. 100–647, title VIII, § 8007(a)(1), Nov. 10, 1988, 102 Stat. 3781.)

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–509, except as otherwise provided, effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of Title 42, The Public Health and Welfare, see section 9002(d) of Pub. L. 99–509, set out as a note under section 418 of Title 42.

CHAPTER 22—RAILROAD RETIREMENT TAX ACT

Subchapter		Sec.[1]
A.	Tax on employees	3201
B.	Tax on employee representatives	3211
C.	Tax on employers	3221
D.	General provisions	3231
E.	Tier 2 tax rate determination.	3241

AMENDMENTS

2001—Pub. L. 107–90, title II, § 204(e)(5), Dec. 21, 2001, 115 Stat. 893, added item for subchapter E.

Subchapter A—Tax on Employees

Sec.
3201. Rate of tax.
3202. Deduction of tax from compensation.

[1] Section numbers editorially supplied.

§ 3201. Rate of tax

(a) Tier 1 tax

In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the applicable percentage of the compensation received during any calendar year by such employee for services rendered by such employee. For purposes of the preceding sentence, the term ''applicable percentage'' means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3101 for the calendar year.

(b) Tier 2 tax

(1) In general

In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the applicable percentage of the compensation received during any calendar year by such employee for services rendered by such employee.

(2) Applicable percentage

For purposes of paragraph (1), the term ''applicable percentage'' means—

(A) 4.90 percent in the case of compensation received during 2002 or 2003, and

(B) in the case of compensation received during any calendar year after 2003, the percentage determined under section 3241 for such calendar year.

(c) Cross reference

For application of different contribution bases with respect to the taxes imposed by subsections (a) and (b), see section 3231(e)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 431; Aug. 31, 1954, ch. 1164, pt. II, § 206(a), 68 Stat. 1040; Pub. L. 86–28, pt. II, § 201(a), May 19, 1959, 73 Stat. 28; Pub. L. 88–133, title II, § 201, Oct. 5, 1963, 77 Stat. 221; Pub. L. 89–97, title I, §§ 105(b)(1), 111(c)(1), July 30, 1965, 79 Stat. 335, 342; Pub. L. 89–212, §§ 4, 5(a), Sept. 29, 1965, 79 Stat. 861; Pub. L. 89–699, title III, § 301(a), Oct. 30, 1966, 80 Stat. 1078; Pub. L. 89–700, title III, § 301(v), (vi), Oct. 30, 1966, 80 Stat. 1088, 1089; Pub. L. 93–69, title I, § 102(a), July 10, 1973, 87 Stat. 162; Pub. L. 94–93, title II, § 201, Aug. 9, 1975, 89 Stat. 466; Pub. L. 94–455, title XIX, § 1903(a)(6), Oct. 4, 1976, 90 Stat. 1807; Pub. L. 97–34, title VII, § 741(a), Aug. 13, 1981, 95 Stat. 347; Pub. L. 98–76, title II, §§ 211(a), 221, Aug. 12, 1983, 97 Stat. 419, 420; Pub. L. 100–203, title IX, § 9031(a), Dec. 22, 1987, 101 Stat. 1330–296; Pub. L. 101–508, title V, § 5125(a), Nov. 5, 1990, 104 Stat. 1388–285; Pub. L. 107–90, title II, § 204(c), Dec. 21, 2001, 115 Stat. 892.)

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–90 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to 4.90 percent of the compensation received during any calendar year by such employee for services rendered by such employee.''

1990—Subsec. (a). Pub. L. 101–508 substituted ''applicable'' for ''following'' before ''percentage of the'' and provision defining the term ''applicable percentage'' for provision specifying that in the case of compensation received during 1985 the rate of tax was 7.05 percent, for 1986 or 1987 the rate was 7.15 percent, for 1988 or 1989 the rate was 7.51 percent, and 1990 or thereafter the rate was 7.65 percent.

1987—Subsec. (b). Pub. L. 100–203 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the following percentage of the compensation received during any calendar year by such employee for services rendered by such employee:

''In the case of compensation received during:	**The rate shall be:**
1985	3.50
1986 or thereafter	4.25.''

1983—Pub. L. 98–76, § 221, amended section generally, substituting a two tiered tax system with accompanying tax rate tables and a cross reference to section 3231 of this title, for provisions which had taxed an employee at 2.75 percent of so much of the compensation paid in any calendar month to such employee for services rendered by him as was not in excess of an amount equal to one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 for any month and which had provided that the rate of tax imposed by subsection (a) be increased by the rate of the tax imposed with respect to wages by section 3101(a) plus the rate imposed by section 3101(b) of so much of the compensation paid in any calendar month to such employee for services rendered by him as was not in excess of an amount equal to one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 for any month.

Pub. L. 98–76, § 211(a), substituted ''2.75 percent'' for ''2.0 percent''.

1981—Subsec. (a). Pub. L. 97–34 added subsec. (a).

Subsec. (b). Pub. L. 97–34 designated existing provisions as subsec. (b) and substituted ''The rate of tax imposed by subsection (a) shall be increased by'' for ''In addition to other taxes, there is hereby imposed on the income of every employee a tax rate equal to''.

1976—Pub. L. 94–455 struck out ''of the Internal Revenue Code of 1954'' after ''wages by section 3101(a)'', ''of such Code'' after ''rate imposed by section 3101(b)'', ''after September 30, 1973,'' after ''for services rendered by him'', ''of the Internal Revenue Code of 1954'' after ''as defined in section 3121'', and ''after September 30, 1973'' after ''for any month''.

1975—Pub. L. 94–93 inserted ''in any calendar month'' after ''compensation paid''.

1973—Pub. L. 93–69 substituted new tax rate provisions on income of employee for services rendered after Sept. 30, 1973, for former provisions which prescribed 6¼, 6½, 7, 7¼, and 7½ percent on income for services rendered after Sept. 30, 1965, Dec. 31, 1965, Dec. 31, 1966, Dec. 31, 1967, and Dec. 31, 1968, respectively, as is not in excess of (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965: *Provided*, That the rate of tax imposed by this section shall be increased, with respect to compensation paid for services rendered after September 30, 1965, by a number of percentage points (including fractional points) equal at any given time to the number of percentage points (including fractional points) by which the rate of the tax imposed with respect to wages by section 3101(a) plus the rate imposed by section 3101(b) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3101 as amended by the Social Security Amendments of 1956).

1966—Pub. L. 89–700 substituted ''rendered after September 30, 1965'' for ''rendered after December 31, 1964'', and ''(i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965'' for ''$400 for any calendar month before the calendar month next following the month in which this provision was amended in 1963, or $450 for any calendar month after the month in which this provision was so amended and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended''.

Pub. L. 89–699 substituted ''7 percent'' for ''6¾ percent'' in subd. (3), ''7¼ percent'' for ''7 percent'' in subd. (4), and ''7½ percent'' for ''7¼ percent'' in subd. (5).

1965—Pub. L. 89–212 substituted pars. (1) to (5) for former pars. (1) and (2) which imposed a tax equal to 6¾ percent of so much of the compensation paid to such employee for services rendered by him after the month in which this provision was amended in 1959, and before Jan. 1, 1962, and 7¼ percent of so much of the compensation paid to such employee for services rendered by him after Dec. 31, 1961, and inserted ''and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended''.

Pub. L. 89–97 substituted ''the rate of the tax imposed with respect to wages by section 3101(a) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3101 as amended by the Social Security Amendments of 1956)'' for ''the rate of the tax imposed with respect to wages by section 3101 at such time exceeds the rate provided by paragraph (2) of such section 3101 as amended by the Social Security Amendments of 1956'' and inserted ''plus the rate imposed by section 3101(b)'' after ''section 3101(a)'', respectively.

1963—Pub. L. 88–133 limited existing taxable compensation base of $400 to any calendar month before Nov. 1963 and increased such base to $450 for any calendar month after Oct. 1963.

1959—Pub. L. 86–28 increased tax from 6¼ percent of compensation not in excess of $350 for any calendar month to 6¾ percent of the compensation not in excess of $400 for any calendar month for services rendered before Jan. 1, 1962, and to 7¼ percent for services rendered after Dec. 31, 1961, and required an increase in the rate of tax with respect to compensation paid for services rendered after Dec. 31, 1964, by a number of percentage points equal at any given time to the number of percentage points by which the rate of tax imposed by section 3101 of this title at such time exceeds the rate provided by par. (2) of such section 3101 as amended by the Social Security Amendments of 1956.

1954—Act Aug. 31, 1954, substituted ''$350'' for ''$300''.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–90 applicable to calendar years beginning after Dec. 31, 2001, see section 204(f) of Pub. L. 107–90, set out as an Effective and Termination Dates of 2001 Amendments note under section 24 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9031(b) of Pub. L. 100–203 provided that: ''The amendment made by this section [amending this section] shall apply with respect to compensation received after December 31, 1987.''

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Section 212 of Pub. L. 98–76 provided that: ''The amendments made by this part [part I (§§ 211, 212) of subtitle A of title II of Pub. L. 98–76, amending this section, sections 3211 and 3221 of this title, and section 430 of Title 42, The Public Health and Welfare] shall apply to compensation paid for services rendered after December 31, 1983, and before January 1, 1985.''

Section 227(a) of Pub. L. 98–76 provided that: ''The amendments made by sections 221, 222, 223, and 225 [amending this section and sections 3202, 3211, 3221, and 3231 of this title and section 430 of Title 42] shall apply to remuneration paid after December 31, 1984.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 741(e) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section and sections 3211, 3221, and 3231 of this title and section 430 of Title 42, The Public Health and Welfare] shall apply to compensation paid for services rendered after September 30, 1981.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to compensation paid for services rendered after Dec. 31, 1976, see section 1903(d) of Pub. L. 94–455, set out as a note under section 3101 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 207 of Pub. L. 94–93 provided that: ''The amendments made by sections 201 through 205 of this title [amending this section and sections 3211, 3221, and 3231 of this title] shall apply for taxable years ending on or after the date of the enactment of this Act [Aug. 9, 1975] and for taxable years ending before the date of the enactment of this Act as to which the period for assessment and collection of tax or the filing of a claim for credit or refund has not expired on the date of enactment of this Act. The amendment made by section 206 of this title [amending section 3231 of this title] shall apply for taxable years beginning on or after the date of enactment of this Act: *Provided*, *however*, That with respect to payment made prior to the date of enactment of this Act, the employee may file a written request under section 206 within six months after the enactment of this Act.''

EFFECTIVE DATE OF 1973 AMENDMENT

Section 109(b) of Pub. L. 93–69 provided that: ''The amendments made by section 102 of this Act [amending this section and sections 3202, 3211, and 3221 of this title] shall become effective on October 1, 1973, and shall apply only with respect to compensation paid for services rendered on or after that date: *Provided*, *however*, That such amendments shall not be applicable to any dock company, common carrier railroad, or railway labor organization described in section 1(a) of the Railroad Retirement Act of 1937 [section 228a(a) of Title 45, Railroads], with respect to those of its employees covered as of October 1, 1973, by a private supplemental pension plan established through collective bargaining, where a moratorium in an agreement made on or before March 8, 1973, is applicable to changes in rates of pay contained in the current collective-bargaining agreement covering such employees, until the earlier of (1) the date as of which such moratorium expires, or (2) the date as of which such dock company, common carrier railroad, or railway labor organization agrees through collective bargaining to make the provisions of such amendments applicable.''

EFFECTIVE DATE OF 1965 AMENDMENTS

Section 6 of Pub. L. 89–212 provided that: ''The amendments made by sections 1 and 3 of this Act [amending sections 228b, 228c, and 228e of Title 45, Railroads] shall take effect with respect to annuities accruing and deaths occurring in months after the month in which this Act is enacted [September 1965], and shall apply also to annuities paid in lump sums equal to their commuted value because of a reduction in such annuities under section 2(e) of the Railroad Retirement Act of 1937 [section 228b(e) of Title 45], as in effect before the amendments made by this Act, as if such annuities had not been paid in such lump sums: *Provided*, *however*, That the amounts of such annuities which were paid in lump sums equal to their commuted value shall not be included in the amount of annuities which become payable by reason of section 1 of this Act [amending section 228b of Title 45]. The amendments made by section 2 of this Act [amending sections 3203, 3231, 3402, 6053, and 6652 of this title, and section 228a of Title 45] shall apply only with respect to tips received after 1965. The amendments made by section 4 of this Act [amending this section and sections 3202, 3211, and 3221 of this title] shall apply only with respect to calendar months after the month in which this Act is enacted. The amendments made by section 5 of this Act [amending this section and sections 3211 and 3221 of this title] shall apply only with respect to compensation paid for services rendered after September 30, 1965.''

Section 105(b)(4) of Pub. L. 89–97 provided that: ''The amendments made by this subsection [amending this section and sections 3211 and 3221 of this title] shall be effective with respect to compensation paid for services rendered after December 31, 1965.''

Amendment by section 111(c)(1) of Pub. L. 89–97 applicable to calendar year 1966, or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act [this chapter] provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act [section 3101 et seq. of this title] provides may be counted for such calendar year, see section 111(e) of Pub. L. 89–97, set out as an Effective Date note under section 1395i–1 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 202 of Pub. L. 86–28 provided that: ''The amendments made by section 201 [amending this section and sections 3202, 3211, and 3221 of this title] shall, except as otherwise provided in such amendments, be effective as of the first day of the calendar month next following the month in which this Act was enacted [May, 1959], and shall apply only with respect to compensation paid after the month of such enactment, for services rendered after such month of enactment.''

EFFECTIVE DATE OF 1954 AMENDMENT

Section 407 of act Aug. 31, 1954, as amended by act Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095, provided that: ''The amendments to the Internal Revenue Code of 1986 [formerly I.R.C. 1954] made by section 206 [amending this section and sections 3202, 3211, 3221, and 3231 of this title] shall become effective as if enacted as a part of the Internal Revenue Code of 1986.''

SEPARABILITY

Section 301 of Pub. L. 93–69 provided that: ''If any provision of this Act [amending this section, sections 3202, 3211, and 3221 of this title, sections 228b, 228c, and 228e of Title 45, Railroads, and section 15a of former Title 49, and enacting provisions set out as notes under this section, and sections 228b, 228c, 228f, and 228*o* of Title 45] or the application thereof to any person or circumstances should be held invalid, the remainder of such Act or the application of such provision to other persons or circumstances shall not be affected thereby.''

PENALTIES AND INTEREST NOT ASSESSED FOR FAILURE TO MAKE TIMELY PAYMENT DURING PERIOD JANUARY 1, 1982, TO JUNE 30, 1982, OF TAXES ATTRIBUTABLE TO AMENDMENTS BY PUB. L. 97–123

For provision that no penalties or interest shall be assessed on account of any failure to make timely payment of taxes imposed by subsec. (b) of this section with respect to payments made for the period Jan. 1, 1982, and ending June 30, 1982, to the extent that such taxes are attributable to section 3 of Pub. L. 97–123 or the amendments made by that section, see section 3(f) of Pub. L. 97–123, set out as a note under section 3101 of this title.

§ 3202. Deduction of tax from compensation

(a) Requirement

The taxes imposed by section 3201 shall be collected by the employer of the taxpayer by de-

ducting the amount of the taxes from the compensation of the employee as and when paid. An employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (3) of section 3231(e) is applicable may deduct an amount equivalent to such taxes with respect to such tips from any compensation of the employee (exclusive of tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than $20.

(b) Indemnification of employer

Every employer required under subsection (a) to deduct the tax shall be liable for the payment of such tax and shall not be liable to any person for the amount of any such payment.

(c) Special rule for tips

(1) In the case of tips which constitute compensation, subsection (a) shall be applicable only to such tips as are included in a written statement furnished to the employer pursuant to section 6053(a), and only to the extent that collection can be made by the employer, at or after the time such statement is so furnished and before the close of the 10th day following the calendar month (or, if paragraph (3) applies, the 30th day following the quarter) in which the tips were deemed paid, by deducting the amount of the tax from such compensation of the employee (excluding tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) as are under control of the employer.

(2) If the taxes imposed by section 3201, with respect to tips which are included in written statements furnished in any month to the employer pursuant to section 6053(a), exceed the compensation of the employee (excluding tips) from which the employer is required to collect the taxes under paragraph (1), the employee may furnish to the employer on or before the 10th day of the following month (or, if paragraph (3) applies, on or before the 30th day of the following quarter) an amount of money equal to the amount of the excess.

(3) The Secretary may, under regulations prescribed by him, authorize employers—

(A) to estimate the amount of tips that will be reported by the employee pursuant to section 6053(a) in any quarter of the calendar year,

(B) to determine the amount to be deducted upon each payment of compensation (exclusive of tips) during such quarter as if the tips so estimated constituted actual tips so reported, and

(C) to deduct upon any payment of compensation (other than tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) to such employee during such quarter (and within 30 days thereafter) such amount as may be necessary to adjust the amount actually deducted upon such compensation of the employee during the quarter to the amount required to be deducted in respect of tips included in written statements furnished to the employer during the quarter.

(4) If the taxes imposed by section 3201 with respect to tips which constitute compensation exceed the portion of such taxes which can be collected by the employer from the compensation of the employee pursuant to paragraph (1) or paragraph (3), such excess shall be paid by the employee.

(d) Special rule for certain taxable group-term life insurance benefits

(1) In general

In the case of any payment for group-term life insurance to which this subsection applies—

(A) subsection (a) shall not apply,

(B) the employer shall separately include on the statement required under section 6051—

(i) the portion of the compensation which consists of payments for group-term life insurance to which this subsection applies, and

(ii) the amount of the tax imposed by section 3201 on such payments, and

(C) the tax imposed by section 3201 on such payments shall be paid by the employee.

(2) Benefits to which subsection applies

This subsection shall apply to any payment for group-term life insurance to the extent—

(A) such payment constitutes compensation, and

(B) such payment is for coverage for periods during which an employment relationship no longer exists between the employee and the employer.

(Aug. 16, 1954, ch. 736, 68A Stat. 431; Aug. 31, 1954, ch. 1164, pt. II, § 206(a), 68 Stat. 1040; Pub. L. 86–28, pt. II, § 201(b), May 19, 1959, 73 Stat. 29; Pub. L. 88–133, title II, § 202, Oct. 5, 1963,77 Stat. 221; Pub. L. 89–212, §§ 2(a), 4, Sept. 29, 1965, 79 Stat. 858, 861; Pub. L. 89–700, title III, § 301(iii), (v), Oct. 30, 1966, 80 Stat. 1088; Pub. L. 93–69, title I, § 102(b), July 10, 1973, 87 Stat. 162; Pub. L. 94–455, title XIX, §§ 1903(a)(7), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1807, 1834; Pub. L. 98–76, title II, § 225(a)(2), (c)(1)(A), (B), (2)–(5), Aug. 12, 1983, 97 Stat. 425; Pub. L. 101–508, title V, § 5124(b), Nov. 5, 1990, 104 Stat. 1388–285.)

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–508 added subsec. (d).

1983—Subsec. (a). Pub. L. 98–76, § 225(a)(2), (c)(1)(A), (2), substituted ''taxes imposed by section 3201'' for ''tax imposed by section 3201'', substituted ''the amount of the taxes'' for ''the amount of the tax'', and ''such taxes'' for ''such tax'', and struck out provisions that if an employee was paid compensation by more than one employer for services rendered during any calendar month and the aggregate of such compensation was in excess of an amount equal to one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 for any month, the tax to be deducted by each employer other than a subordinate unit of a national railway-labor-organization employer from the compensation paid by him to the employee with respect to such month would be that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him to the employee for services rendered during such month

bears to the total compensation paid by all such employers to such employee for services rendered during such month; and that in the event that the compensation so paid by such employers to the employee for services rendered during such month was less than an amount equal to one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 for any month, each subordinate unit of a national railway-labor-organization employer would deduct such proportion of any additional tax as the compensation paid by such employer to such employee for services rendered during such month bears to the total compensation paid by all such employers to such employee for services rendered during such month.

Subsec. (c)(2). Pub. L. 98–76, § 225(c)(1)(B), (3), (5), substituted ''taxes imposed by section 3201'' for ''tax imposed by section 3201'', ''the taxes under paragraph (1)'' for ''the tax under paragraph (1)'', and ''exceed'' for ''exceeds''.

Subsec. (c)(4). Pub. L. 98–76, § 225(c)(1)(B), (4), (5), substituted ''taxes imposed by section 3201'' for ''tax imposed by section 3201'', ''such taxes'' for ''such tax'', and ''exceed'' for ''exceeds''.

1976—Subsec. (a). Pub. L. 94–455, § 1903(a)(7)(A), struck out provisions relating to the September 30, 1973, qualification on the applicability of provisions of this subsection and ''of the Internal Revenue Code of 1954'' before ''for any month'' wherever appearing.

Subsec. (b). Pub. L. 94–455, § 1903(a)(7)(B), struck out ''made'' after ''to deduct the tax shall be''.

Subsec. (c)(3). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1973—Subsec. (a). Pub. L. 93–69, in second sentence reading ''If an employee . . .'', substituted ''1973'' for ''1965'' wherever appearing, struck out ''(i) $450, or (ii)'' before ''an amount equal to'' in two places, and struck out '', whichever is greater,'' after ''Internal Revenue Code of 1954'' in two places.

1966—Subsec. (a). Pub. L. 89–700 substituted ''after September 30, 1965'' for ''after the month in which this provision was amended in 1959'' in six places, and ''(i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965'' for ''$400 for any calendar month before the calendar month next following the month in which this provision was amended in 1963, or $450 for any calendar month after the month in which this provision was so amended and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended'' in two places.

1965—Subsec. (a). Pub. L. 89–212, §§ 2(a)(1), 4, inserted sentence permitting an employer who is furnished by an employee a written statement of tips pursuant to section 6053(a) to which par. (3) of section 3231(e) is applicable to deduct an amount equivalent to such tax with respect to such tips from any compensation of the employee under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than $20, and inserted ''and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121, whichever is greater, for any month after the month in which this provision was so amended'' in two places.

Subsec. (c). Pub. L. 89–212, § 2(a)(2), added subsec. (c).

1963—Subsec. (a). Pub. L. 88–133 limited existing taxable compensation base of $400 to any calendar month before Nov. 1963 and increased such base to $450 for any calendar month after Oct. 1963.

1959—Subsec. (a). Pub. L. 86–28 substituted ''after the month in which this provision was amended in 1959'' for ''after 1954'' and for ''after December 31, 1954'' in five places, and ''$400'' for ''$350'' in two places.

1954—Subsec. (a). Act Aug. 31, 1954, substituted ''$350'' for ''$300'' wherever appearing.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to coverage provided after Dec. 31, 1990, see section 5124(c) of Pub. L. 101–508, set out as a note under section 3102 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98–76, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1903(a)(7) of Pub. L. 94–455 applicable with respect to compensation paid for services rendered after Dec. 31, 1976, see section 1903(d) of Pub. L. 94–455, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–69 effective Oct. 1, 1973, and applicable only with respect to compensation paid for services rendered on or after Oct. 1, 1973; and applicable to railway labor organization covered by a private supplemental pension plan as of Oct. 1, 1973, and subject to a moratorium agreed to on or before Mar. 8, 1973, for changes in pay rates, on the earlier of (1) date of expiration of such moratorium, or (2) date as of which the railway labor organization through collective bargaining agreement makes amendment applicable, see section 109(b) of Pub. L. 93–69, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 2(a) of Pub. L. 89–212 effective only with respect to tips received after 1965, and amendment by section 4 of Pub. L. 89–212 effective only with respect to calendar months after the month in which Pub. L. 89–212 is enacted, see section 6 of Pub. L. 89–212, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–28 effective, except as otherwise provided, first day of calendar month next following May 1959, see section 202 of Pub. L. 86–28, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 31, 1954, effective as if enacted as a part of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], see section 407 of act Aug. 31, 1954, as amended, set out as a note under section 3201 of this title.

Subchapter B—Tax on Employee Representatives

Sec.
3211. Rate of tax.
3212. Determination of compensation.

§ 3211. Rate of tax

(a) Tier 1 tax

In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the applicable percentage of the compensation received during any calendar year by such employee representative for services rendered by such employee representative.

For purposes of the preceding sentence, the term ''applicable percentage'' means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3101 and subsections (a) and (b) of section 3111 for the calendar year.

(b) Tier 2 tax

(1) In general

In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the applicable percentage of the compensation received during any calendar year by such employee representatives for services rendered by such employee representative.

(2) Applicable percentage

For purposes of paragraph (1), the term ''applicable percentage'' means—

(A) 14.75 percent in the case of compensation received during 2002,

(B) 14.20 percent in the case of compensation received during 2003, and

(C) in the case of compensation received during any calendar year after 2003, the percentage determined under section 3241 for such calendar year.

(c) Cross reference

For application of different contribution bases with respect to the taxes imposed by subsections (a) and (b), see section 3231(e)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 432; Aug. 31, 1954, ch. 1164, pt. II, § 206(a), 68 Stat. 1040; Pub. L. 86–28, pt. II, § 201(c), May 19, 1959, 73 Stat. 29; Pub. L. 88–133, title II, § 201, Oct. 5, 1963, 77 Stat. 221; Pub. L. 89–97, title I, §§ 105(b)(2), 111(c)(2), July 30, 1965, 79 Stat. 335, 342; Pub. L. 89–212, §§ 4, 5(b), Sept. 29, 1965, 79 Stat. 861; Pub. L. 89–699, title III, § 301 (b), (d), Oct. 30, 1966, 80 Stat. 1078; Pub. L. 89–700, title III, § 301(v), (vi), Oct. 30, 1966, 80 Stat. 1088, 1089; Pub. L. 91–215, § 4, Mar. 17, 1970, 84 Stat. 70; Pub. L. 93–69, title I, § 102(c), July 10, 1973, 87 Stat. 162; Pub. L. 94–93, title II, § 202, Aug. 9, 1975, 89 Stat. 466; Pub. L. 94–455, title XIX, § 1903(a)(8), Oct. 4, 1976, 90 Stat. 1807; Pub. L. 97–34, title VII, § 741(b), Aug. 13, 1981, 95 Stat. 347; Pub. L. 98–76, title II, §§ 211(c), 223, Aug. 12, 1983, 97 Stat. 419, 421; Pub. L. 101–508, title V, § 5125(b), Nov. 5, 1990, 104 Stat. 1388–285; Pub. L. 107–90, title II, §§ 203(a), 204(b), Dec. 21, 2001, 115 Stat. 891.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–90, § 204(b), added subsec. (a) and struck out former subsec. (a), which related to imposition of tier 1 and 2 taxes.

Subsec. (b). Pub. L. 107–90, § 204(b), added subsec. (b).

Pub. L. 107–90, § 203(a), struck out subsec. (b) which read as follows: ''In addition to other taxes, there is hereby imposed on the income of each employee representative a tax at a rate equal to the rate of excise tax imposed on every employer, provided for in section 3221(c), for each man-hour for which compensation is paid to him for services rendered as an employee representative.''

Subsec. (c). Pub. L. 107–90, § 204(b), added subsec. (c).

1990—Subsec. (a). Pub. L. 101–508 substituted ''applicable'' for ''following'' before ''percentage of the'' and provision defining the term ''applicable percentage'' for provision specifying that in the case of compensation received during 1985 the rate of tax was 14.10 percent, for 1986 or 1987 the rate was 14.30 percent, for 1988 or 1989 the rate was 15.02 percent, and for 1990 or thereafter the rate was 15.30 percent.

1983—Subsec. (a). Pub. L. 98–76, § 223, substituted provisions imposing a two tiered tax on each employee representative equal to the percentage of the compensation received during any calendar year by such employee representative for services rendered as is set out in accompanying tables, for provisions that had imposed on each employee representative a tax equal to 12.75 percent plus the sum of the rates of tax imposed with respect to wages by sections 3101(a), 3101(b), 3111(a), and 3111(b) of so much of the compensation paid in any calendar month to such employee representative for services rendered by him as was not in excess of an amount equal to one-twelfth of the current maximum annual taxable ''wage'' as defined in section 3121 for any month.

Pub. L. 98–76, § 211(c), substituted ''12.75 percent'' for ''11.75 percent''.

1981—Subsec. (a). Pub. L. 97–34 substituted ''11.75'' for ''9.5''.

1976—Subsec. (a). Pub. L. 94–455 substituted ''3111(a), and 3111(b)'' for ''3111(a), 3111(b)'', struck out ''of the Internal Revenue Code of 1954'' before ''of so much of the compensation'', ''after September 30, 1973,'' after ''rendered by him'', ''of the Internal Revenue Code of 1954'' after ''as defined in section 3121'', and ''after September 30, 1973'' after ''for any month''.

1975—Subsec. (a). Pub. L. 94–93 inserted ''in any calendar month'' after ''compensation paid''.

1973—Subsec. (a). Pub. L. 93–69 substituted new tax rate provisions on income of employee representatives for services rendered after Sept. 30, 1973, for former provisions which prescribed 12½, 13, 14, 14½, and 15 percent on income for services rendered after Sept. 30, 1965, Dec. 31, 1965, Dec. 31, 1966, Dec. 31, 1967, and Dec. 31, 1968, respectively, as is not in excess of (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965: *Provided*, That the rate of tax imposed by this section shall be increased, with respect to compensation paid for services rendered after September 30, 1965, by a number of percentage points (including fractional points) equal at any given time to twice the number of percentage points (including fractional points) by which the rate of the tax imposed with respect to wages by section 3101(a) plus the rate imposed by section 3101(b) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3101 as amended by the Social Security Amendments of 1956).

1970—Subsec. (b). Pub. L. 91–215 substituted the rate of excise tax imposed on every employer under section 3221(c) of this title for a flat 2-cents per man hour tax as the rate for additional taxes imposed on the income of employee representatives for each man hour of compensation paid.

1966—Pub. L. 89–700 substituted ''rendered after September 30, 1965'' for ''rendered after December 31, 1964'', and ''(i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965'' for ''$400 for any calendar month before the calendar month next following the month in which this provision was amended in 1963, or $450 for any calendar month after the month in which this provision was so amended and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended''.

Pub. L. 89–699, § 301(b), (d), designated existing provisions as subsec. (a), and substituted ''14 percent'' for ''13½ percent'' in subd. (3), ''14½ percent'' for ''14 percent'' in subd. (4), and ''15 percent'' for ''14½ percent'' in subd. (5).

Subsec. (b). Pub. L. 89–699, §301(d), added subsec. (b).

1965—Pub. L. 89–212 substituted pars. (1) to (5) for former pars. (1) and (2) which imposed a tax equal to 13½ percent of so much of the compensation paid to such employee representative for services rendered by him after the month in which this provision was amended in 1959, and before Jan. 1, 1962, and 14½ percent of so much of the compensation paid to such employee representative for services rendered by him after Dec. 31, 1961, and inserted ''and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121, whichever is greater, for any month after the month in which this provision was so amended''.

Pub. L. 89–97 substituted ''the rate of the tax imposed with respect to wages by section 3101(a) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3101 as amended by the Social Security Amendments of 1956)'' for ''the rate of the tax imposed with respect to wages by section 3101 at such time exceeds the rate provided by paragraph (2) of such section 3101 as amended by the Social Security Amendments of 1956'' and inserted ''plus the rate imposed by section 3101(b)'' after ''section 3101(a)'', respectively.

1963—Pub. L. 88–133 limited the existing taxable compensation base of $400 to any calendar month before Nov. 1963 and increased such base to $450 for any calendar month after Oct. 1963.

1959—Pub. L. 86–28 increased the tax from 12½ percent of the compensation not in excess of $350 for any calendar month to 13½ percent of the compensation not in excess of $400 for any calendar month for services rendered before Jan. 1, 1962, and to 14½ percent for services rendered after Dec. 31, 1961, and required an increase in the rate of tax with respect to compensation paid for services rendered after December 31, 1964, by a number of percentage points equal at any given time to twice the number of percentage points by which the rate of tax imposed by section 3101 of this title at such time exceeds the rate provided by par. (2) of such section 3101 as amended by the Social Security Amendments of 1956.

1954—Act Aug. 31, 1954, substituted ''$350'' for ''$300''.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–90, title II, §203(c), Dec. 21, 2001, 115 Stat. 891, provided that: ''The amendments made by this section [amending this section and section 3221 of this title] shall apply to calendar years beginning after December 31, 2001.''

Amendment by section 204(b) of Pub. L. 107–90 applicable to calendar years beginning after Dec. 31, 2001, see section 204(f) of Pub. L. 107–90, set out as an Effective and Termination Dates of 2001 Amendments note under section 24 of this title.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Amendment by section 211(c) of Pub. L. 98–76 applicable to compensation paid for services rendered after Dec. 31, 1983, and before Jan. 1, 1985, see section 212 of Pub. L. 98–76, set out as a note under section 3201 of this title.

Amendment by section 223 of Pub. L. 98–76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98–76, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to compensation paid for services rendered after Sept. 30, 1981, see section 741(e) of Pub. L. 97–34, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to compensation paid for services rendered after Dec. 31, 1976, see section 1903(d) of Pub. L. 94–455, set out as a note under section 3101 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–93 applicable for taxable years ending on or after Aug. 9, 1975, and for taxable years ending before Aug. 9, 1975, as to which the period for assessment and collection of tax or the filing of a claim for credit or refund has not expired on Aug. 9, 1975, see section 207 of Pub. L. 94–93, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–69 effective Oct. 1, 1973, and applicable only with respect to compensation paid for services rendered on or after Oct. 1, 1972; and applicable to railway labor organization covered by private supplemental pension plan as of Oct. 1, 1973, and subject to a moratorium, agreed to on or before Mar. 8, 1973, for changes in pay rates, on the earlier of (1) date of expiration of such moratorium, or (2) date as of which the railway labor organization through collective bargaining agreement makes amendment applicable, see section 109(b) of Pub. L. 93–69, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 301(f) of Pub. L. 89–699, as amended by section 8 of Pub. L. 91–215, provided that: ''The amendments made by subsections (d) and (e) of this section [amending this section and section 3221 of this title] shall be effective with respect to man-hours, beginning with the first month following enactment of this Act [Oct. 30, 1966], for which compensation is paid.''

EFFECTIVE DATE OF 1965 AMENDMENTS

Amendment by section 4 of Pub. L. 89–212 effective only with respect to calendar months after month in which Pub. L. 89–212 is enacted [September 1965], and amendment by section 5(b) of Pub. L. 89–212 effective only with respect to compensation paid for services rendered after Sept. 30, 1965, see section 6 of Pub. L. 89–212, set out as a note under section 3201 of this title.

Amendment by section 105(b)(2) of Pub. L. 89–97 effective with respect to compensation paid for services rendered after Dec. 31, 1965, see section 105(b)(4) of Pub. L. 89–97, set out as a note under section 3201 of this title.

Amendment by section 111(c)(2) of Pub. L. 89–97 applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act provides may be counted for such calendar year, see section 111(e) of Pub. L. 89–97, set out as an Effective Date note under section 1395i–1 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–28 effective, except as otherwise provided, first day of calendar month next following May 1959, see section 202 of Pub. L. 86–28, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 31, 1954, effective as if enacted as a part of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], see section 407 of act Aug. 31, 1954, as amended, set out as a note under section 3201 of this title.

SEPARABILITY

Section 9 of Pub. L. 91–215 provided that: ''If any provision of this Act [amending this section, section 3221 of this title, and sections 228c and 228*o* of Title 45, Railroads, enacting provisions set out as notes under section 3221 of this title and sections 228c and 228*o* of Title 45, and amending provisions set out as notes under this section] or the application thereof to any person or cir-

cumstances is held invalid, the remainder of this Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.''

PENALTIES AND INTEREST NOT ASSESSED FOR FAILURE TO MAKE TIMELY PAYMENT DURING PERIOD JANUARY 1, 1982, TO JUNE 30, 1982, OF TAXES ATTRIBUTABLE TO AMENDMENTS BY PUB. L. 97–123

For provision that no penalties or interest shall be assessed on account of any failure to make timely payment of taxes imposed by this section with respect to payments made for the period Jan. 1, 1982, and ending June 30, 1982, to the extent that such taxes are attributable to section 3 of Pub. L. 97–123 or the amendments made by that section, see section 3(f) of Pub. L. 97–123, set out as a note under section 3101 of this title.

§ 3212. Determination of compensation

The compensation of an employee representative for the purpose of ascertaining the tax thereon shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in section 3231(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 432.)

Subchapter C—Tax on Employers

Sec.
3221. Rate of tax.

§ 3221. Rate of tax

(a) Tier 1 tax

In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the applicable percentage of compensation paid during any calendar year by such employer for services rendered to such employer. For purposes of the preceding sentence, the term ''applicable percentage'' means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3111 for the calendar year.

(b) Tier 2 tax

(1) In general

In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the applicable percentage of the compensation paid during any calendar year by such employer for services rendered to such employer.

(2) Applicable percentage

For purposes of paragraph (1), the term ''applicable percentage'' means—

(A) 15.6 percent in the case of compensation paid during 2002,

(B) 14.2 percent in the case of compensation paid during 2003, and

(C) in the case of compensation paid during any calendar year after 2003, the percentage determined under section 3241 for such calendar year.

(c) Special rate for certain individuals hired in 2010

(1) In general

In the case of compensation paid by a qualified employer during the period beginning on the day after the date of the enactment of this subsection and ending on December 31, 2010, with respect to having a qualified individual in the employer's employ for services rendered to such qualified employer, the applicable percentage under subsection (a) shall be equal to the rate of tax in effect under section 3111(b) for the calendar year.

(2) Qualified employer

The term ''qualified employer'' means any employer other than the United States, any State, or any political subdivision thereof, or any instrumentality of the foregoing.

(3) Qualified individual

For purposes of this subsection, the term ''qualified individual'' means any individual who—

(A) begins employment with a qualified employer after February 3, 2010, and before January 1, 2011,

(B) certifies by signed affidavit, under penalties of perjury, that such individual has not been employed for more than 40 hours during the 60-day period ending on the date such individual begins such employment,

(C) is not employed by the qualified employer to replace another employee of such employer unless such other employee separated from employment voluntarily or for cause, and

(D) is not an individual described in section 51(i)(1) (applied by substituting ''qualified employer'' for ''taxpayer'' each place it appears).

(4) Election

A qualified employer may elect to have this subsection not apply. Such election shall be made in such manner as the Secretary may require.

(5) Special rule for first calendar quarter of 2010

(A) Nonapplication of exemption during first quarter

Paragraph (1) shall not apply with respect to compensation paid during the first calendar quarter of 2010.

(B) Crediting of first quarter exemption during second quarter

The amount by which the tax imposed under subsection (a) would (but for subparagraph (A)) have been reduced with respect to compensation paid by a qualified employer during the first calendar quarter of 2010 shall be treated as a payment against the tax imposed under subsection (a) with respect to the qualified employer for the second calendar quarter of 2010 which is made on the date that such tax is due.

(d) Cross reference

For application of different contribution bases with respect to the taxes imposed by subsections (a) and (b), see section 3231(e)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 433; Aug. 31, 1954, ch. 1164, pt. II, § 206(a), 68 Stat. 1040; Pub. L. 86–28, pt. II, § 201(d), May 19, 1959, 73 Stat. 29; Pub. L. 88–133, title II, § 202, Oct. 5, 1963, 77 Stat.

221; Pub. L. 89–97, title I, §§105(b)(3), 111(c)(3), July 30, 1965, 79 Stat. 335, 342; Pub. L. 89–212, §§4, 5(c), Sept. 29, 1965, 79 Stat. 861, 862; Pub. L. 89–699, title III, §301(c), (e), Oct. 30, 1966, 80 Stat. 1078; Pub. L. 89–700, title III, §§301(iii), (v), (vi), 302, Oct. 30, 1966, 80 Stat. 1088, 1089; Pub. L. 91–215, §5(a), (b)(1), Mar. 17, 1970, 84 Stat. 71; Pub. L. 93–69, title I, §102(d)–(f), July 10, 1973, 87 Stat. 162, 163; Pub. L. 93–445, title V, §501, Oct. 16, 1974, 88 Stat. 1359; Pub. L. 94–93, title II, §203, Aug. 9, 1975, 89 Stat. 466; Pub. L. 94–455, title XIX, §§1903(a)(9), 1906(b)(13)(G), Oct. 4, 1976, 90 Stat. 1808, 1835; Pub. L. 97–34, title VII, §741(c), Aug. 13, 1981, 95 Stat. 347; Pub. L. 98–76, title II, §§211(b), 222, Aug. 12, 1983, 97 Stat. 419, 420; Pub. L. 100–203, title IX, §9032(a), Dec. 22, 1987, 101 Stat. 1330–296; Pub. L. 101–508, title V, §5125(c), Nov. 5, 1990, 104 Stat. 1388–286; Pub. L. 107–90, title II, §§203(b), 204(a), Dec. 21, 2001, 115 Stat. 891; Pub. L. 111–147, title I, §101(d)(1), Mar. 18, 2010, 124 Stat. 74.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (c)(1), is the date of the enactment of Pub. L. 111–147, which was approved Mar. 18, 2010.

AMENDMENTS

2010—Subsecs. (c), (d). Pub. L. 111–147 added subsec. (c) and redesignated former subsec. (c) as (d).

2001—Subsec. (b). Pub. L. 107–90, §204(a), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 16.10 percent of the compensation paid during any calendar year by such employer for services rendered to such employer.''

Subsecs. (c) to (e). Pub. L. 107–90, §203(b), redesignated subsec. (e) as (c) and struck out former subsecs. (c) and (d) which provided, in subsec. (c), for imposition of excise tax on every employer, with respect to having individuals in his employ, for each man-hour for which compensation was paid by such employer for services rendered to him during any calendar quarter, and for credit against such tax of amount equivalent in each month to the aggregate amount of reductions in supplemental annuities accruing in such month to employees of such employer, and, in subsec. (d), that such tax would not apply to an employer with respect to employees covered by a supplemental pension plan which is established pursuant to an agreement reached through collective bargaining between the employer and employees.

1990—Subsec. (a). Pub. L. 101–508 substituted ''applicable'' for ''following'' before ''percentage of'' and provision defining ''applicable percentage'' for provision specifying the tax rate to be 7.05 percent, 7.15 percent, 7.51 percent, and 7.65 percent in the case of compensation paid during 1985, 1986 or 1987, 1988 or 1989, or 1990 or thereafter, respectively.

1987—Subsec. (b). Pub. L. 100–203 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentage of compensation paid during any calendar year by such employer for services rendered to such employer:

''In the case of compensation paid during:	**The rate shall be:**
1985	13.75
1986 or thereafter	14.75.''

1983—Subsec. (a). Pub. L. 98–76, §222(a), in amending subsec. (a) generally, substituted provisions imposing an excise tax on employers, with respect to having individuals in his employ, equal to a percentage of compensation paid as set out in an accompanying table, for provisions which imposed an excise tax on employers, with respect to having individuals in his employ, equal to 12.75 percent of so much of the compensation paid in any calendar month by such employer for services rendered to him as was not in excess of an amount equal to one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 for any month, with certain exceptions dealing with multiple employers.

Pub. L. 98–76, §211(b), substituted ''12.75 percent'' for ''11.75 percent''.

Subsec. (b). Pub. L. 98–76, §222(a), in amending subsec. (b) generally, substituted provisions imposing a second tier excise tax on employers equal to a percentage of compensation paid as set out in an accompanying table, for provisions that the rate of tax imposed by former subsec. (a) would be increased by the rate of tax imposed with respect to wages by section 3111(a) plus the rate imposed by section 3111(b).

Subsec. (e). Pub. L. 98–76, §222(b), added subsec. (e).

1981—Subsec. (a). Pub. L. 97–34 substituted in first sentence ''11.75'' for ''9.5''.

1976—Subsec. (a). Pub. L. 94–455, §§1903(a)(9)(A), 1906(b)(13)(G), struck out provisions relating to the September 30, 1973 qualification on the applicability of provisions of this subsection, ''of the Internal Revenue Code of 1954'' after ''as defined in section 3121'' wherever appearing, and ''of the Treasury'' after ''to the Secretary''.

Subsec. (b). Pub. L. 94–455, §1903(a)(9)(B), struck out '', with respect to compensation paid for services rendered after September 30, 1973,'' after ''shall be increased'', ''of the Internal Revenue Code of 1954'' after ''by section 3111(a)'' and ''of such Code'' after ''by section 3111(b)''.

Subsec. (c). Pub. L. 94–455, §§1903(a)(9)(C), 1906(b)(13)(G), struck out ''(1) at the rate of two cents for the period beginning November 1, 1966, and ending March 31, 1970, and (2) commencing April 1, 1970,'' after ''during any calendar quarter,'' , ''commencing with the quarter beginning April 1, 1970'' after ''required for each calendar quarter'', ''of the Treasury'' after ''representatives, and the Secretary'' and ''of the Treasury'' after ''shall certify to the Secretary''.

1975—Subsec. (a). Pub. L. 94–93 substituted ''compensation paid in any calendar month by such employer'' for ''compensation paid by such employer''.

1974—Subsec. (c). Pub. L. 93–445, §501(a), struck out ''for appropriation to the Railroad Retirement Supplemental Account provided for in section 15(b) of the Railroad Retirement Act of 1937'' after ''commencing April 1, 1970, at such rate as will make available'', substituted ''at the level provided under section 3(j) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974'' for ''under section 3(j) of such Act'', and inserted ''or section 2(h)(2) of the Railroad Retirement Act of 1974'' after ''section 3(j)(2) of the Railroad Retirement Act of 1937''.

Subsec. (d). Pub. L. 93–445, §501(b), substituted ''section 2(b) of the Railroad Retirement Act of 1974'' for ''section 3(j) of the Railroad Retirement Act of 1937'' and ''section 2(b) of such Act'' for ''section 3(j) of such Act''.

1973—Subsec. (a). Pub. L. 93–69, §102(d), (e), substituted new tax rate provisions on employers for services rendered after Sept. 30, 1973, for former provisions which prescribed 6¼, 6½, 7, 7¼, and 7½ percent on income for services rendered after Sept. 30, 1965; Dec. 31, 1965; Dec. 31, 1966; Dec. 31, 1967; and Dec. 31, 1968, respectively, as is, with respect to any employee for any calendar month, not in excess of (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after Sept. 30, 1965, and, in first sentence, substituted ''1973'' for ''1965'' wherever appearing, struck out ''(i) $450, or (ii)'' before ''an amount equal to'' in two places, and struck out '', whichever is greater,''

after ''Internal Revenue Code of 1954'' in two places, respectively.

Subsec. (b). Pub. L. 93–69, § 102(f), substituted ''1973'' for ''1965'' and ''by the rate of tax imposed with respect to wages by section 3111(a) of the Internal Revenue Code of 1954 plus the rate imposed by section 3111(b) of such Code'', for ''by a number of percentage points (including fractional points) equal at any given time to the number of percentage points (including fractional points) by which the rate of the tax imposed with respect to wages by section 3111(a) plus the rate imposed by section 3111(b) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3111 as amended by the Social Security Amendments of 1956)''.

1970—Subsec. (c). Pub. L. 91–215, § 5(a), provided a variable standard of taxation on employers for services rendered them during any calendar quarter at the existing 2 cent rate for each man-hour of services for the period from Nov. 1, 1966 to Mar. 31, 1970, and thereafter at such rates as will permit supplemental annuity payments under section 228c(j) of this title, and authorized the Railroad Retirement Board to make the necessary determination of rates, and made it its duty to publish notice of such determinations in the Federal Register.

Subsec. (d). Pub. L. 91–215, § 5(b)(1), added subsec. (d).

1966—Subsec. (a). Pub. L. 89–700, §§ 301(iii), (v), 302, substituted ''after September 30, 1965'' for ''after the month in which this provision was amended in 1959'' in six places, and ''(i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965'' for ''400 for any calendar month before the calendar month next following the month in which this provision was amended in 1963, or $450 for any calendar month after the month in which this provision was so amended and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended'' in four places, and inserted sentence providing that where compensation for services rendered in a month is paid by two or more employers, one of the employers may, by notice to the Secretary, and by agreement with the other employer, elect for the tax imposed by section 3201 and this section to apply to all of the compensation paid by such employer for such month as does not exceed the maximum amount of compensation in respect to which taxes are imposed by section 3201 and this section; and in such a case the liability of the other employer shall be limited to the difference, if any, between the compensation paid by the electing employer and the maximum amount of compensation to which section 3201 and this section apply.

Pub. L. 89–699, § 301(c), substituted ''7 percent'' for ''6¾ percent'' in subd. (3), ''7¼ percent'' for ''7 percent'' in subd. (4), and ''7½ percent'' for ''7¼ percent'' in subd. (5).

Subsec. (b). Pub. L. 89–700, § 301(vi), substituted ''after September 30, 1965'' for ''after December 31, 1964''.

Subsec. (c). Pub. L. 89–699 added subsec. (c).

1965—Subsec. (a). Pub. L. 89–212 substituted pars. (1) to (5) for former pars. (1) and (2) which imposed an excise tax equal to 6¾ percent of so much of the compensation paid by such employer for services rendered to him after the month in which this provision was amended in 1959, and before Jan. 1, 1962, and 7¼ percent of so much of the compensation paid by such employer for services rendered to him after Dec. 31, 1961, and inserted ''and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121, whichever is greater, for any month after the month in which this provision was so amended'' wherever appearing.

Subsec. (b). Pub. L. 89–97 substituted ''the rate of the tax imposed with respect to wages by section 3111(a) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3111 as amended by the Social Security Amendments of 1956)'' for ''the rate of the tax imposed with respect to wages by section 3111 at such time exceeds the rate provided by paragraph (2) of such section 3111 as amended by the Social Security Amendments of 1956'' and inserted ''plus the rate imposed by section 3111(b)'' after ''section 3111(a)'', respectively.

1963—Subsec. (a). Pub. L. 88–133 limited the existing taxable compensation base of $400 to any calendar month before Nov. 1963 and increased such base to $450 for any calendar month after Oct. 1963.

1959—Subsec. (a). Pub. L. 86–28, § 201(d)(1), (2)(A), (B), designated former provisions of section as subsec. (a), increased the tax from 6¼ percent of the compensation not in excess of $350 for any calendar month to 6¾ percent of the compensation not in excess of $400 for any calendar month for services rendered before Jan. 1, 1962, and to 7¼ percent for services rendered after Dec. 31, 1961, and substituted ''after the month in which this provision was amended in 1959'' for ''after 1954'' and for ''after December 31, 1954'' in six places, ''not more than $400'' for ''not more than $350'', and ''less than $400'' for ''less than $350''.

Subsec. (b). Pub. L. 86–28, § 201(d)(2)(C), added subsec. (b).

1954—Act Aug. 31, 1954, substituted ''$350'' for ''$300'' wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–147 applicable to compensation paid after Mar. 18, 2010, see section 101(e) of Pub. L. 111–147, set out as a note under section 51 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 203(b) of Pub. L. 107–90 applicable to calendar years beginning after Dec. 31, 2001, see section 203(c) of Pub. L. 107–90, set out as a note under section 3211 of this title.

Amendment by section 204(a) of Pub. L. 107–90 applicable to calendar years beginning after Dec. 31, 2001, see section 204(f) of Pub. L. 107–90, set out as an Effective and Termination Dates of 2001 Amendments note under section 24 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9032(b) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall apply with respect to compensation paid after December 31, 1987.''

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Amendment by section 211(b) of Pub. L. 98–76 applicable to compensation paid for services rendered after Dec. 31, 1983, and before Jan. 1, 1985, see section 212 of Pub. L. 98–76, set out as a note under section 3201 of this title.

Amendment by section 222 of Pub. L. 98–76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98–76, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to compensation paid for services rendered after Sept. 30, 1981, see section 741(e) of Pub. L. 97–34, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1903(a)(9) of Pub. L. 94–455 applicable with respect to compensation paid for services rendered after Dec. 31, 1976, see section 1903(d) of Pub. L. 94–455, set out as a note under section 3101 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–93 applicable for taxable years ending on or after Aug. 9, 1975, and for taxable

years ending before Aug. 9, 1975, as to which the period for assessment and collection of tax or the filing of a claim for credit or refund has not expired on Aug. 9, 1975, see section 207 of Pub. L. 94–93, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 604 of Pub. L. 93–445 provided that: ''The amendments made by the provisions of title V of this Act [amending this section and section 6413 of this title] shall become effective on January 1, 1975, and shall apply only with respect to compensation paid for services rendered on or after that date.''

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–69 effective Oct. 1, 1973, and applicable only with respect to compensation paid for services rendered on or after Oct. 1, 1973; and applicable to railway labor organization covered by a private supplemental pension plan as of Oct. 1, 1973, and subject to a moratorium, agreed to on or before Mar. 8, 1973, for changes in pay rates, on the earlier of (1) date of expiration of such moratorium, or (2) date as of which the railway labor organization through collective bargaining agreement makes amendment applicable, see section 109(b) of Pub. L. 93–69, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–699 effective with respect to man-hours, beginning with first month following Oct. 30, 1966, for which compensation is paid, see section 301(f) of Pub. L. 89–699, set out as a note under section 3211 of this title.

EFFECTIVE DATE OF 1965 AMENDMENTS

Amendment by section 4 of Pub. L. 89–212 effective only with respect to calendar months after the month in which Pub. L. 89–212 is enacted [September 1965], and amendment by section 5(c) of Pub. L. 89–212 effective only with respect to compensation paid for services rendered after Sept. 30, 1965, see section 6 of Pub. L. 89–212, set out as a note under section 3201 of this title.

Amendment by section 105(b)(3) of Pub. L. 89–97 effective with respect to compensation paid for services rendered after Dec. 31, 1965, see section 105(b)(4) of Pub. L. 89–97, set out as a note under section 3201 of this title.

Amendment by section 111(c)(3) of Pub. L. 89–97 applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act provides may be counted for such calendar year, see section 111(e) of Pub. L. 89–97, set out as an Effective Date note under section 1395i–1 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–28 effective, except as otherwise provided, first day of calendar month next following May 1959, see section 202 of Pub. L. 86–28, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 31, 1954, effective as if enacted as a part of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], see section 407 of act Aug. 31, 1954, as amended, set out as a note under section 3201 of this title.

PENALTIES AND INTEREST NOT ASSESSED FOR FAILURE TO MAKE TIMELY PAYMENT DURING PERIOD JANUARY 1, 1982, TO JUNE 30, 1982, OF TAXES ATTRIBUTABLE TO AMENDMENTS BY PUB. L. 97–123

For provision that no penalties or interest shall be assessed on account of any failure to make timely payment of taxes imposed by subsec. (b) of this section with respect to payments made for the period Jan. 1, 1982, and ending June 30, 1982, to the extent that such taxes are attributable to section 3 of Pub. L. 97–123 or the amendments made by that section, see section 3(f) of Pub. L. 97–123, set out as a note under section 3101 of this title.

EXCISE TAXES ON EMPLOYERS; EMPLOYEES COVERED BY CERTAIN SUPPLEMENTAL PENSION PLANS

Section 5(b)(2) of Pub. L. 91–215 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to (A) supplemental annuities paid on or after April 1, 1970, and (B) man-hours with respect to which compensation is paid for services rendered to such employer on or after such day.''

Subchapter D—General Provisions

Sec.
3231. Definitions.
3232. Court jurisdiction.
3233. Short title.

§ 3231. Definitions

(a) Employer

For purposes of this chapter, the term ''employer'' means any carrier (as defined in subsection (g)), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer; except that the term ''employer'' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Surface Transportation Board is hereby authorized and directed upon request of the Secretary, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this exception. The term ''employer'' shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended (45 U.S.C., chapter 8), and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the

constitutions and bylaws of such organizations. The term ''employer'' shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

(b) Employee

For purposes of this chapter, the term ''employee'' means any individual in the service of one or more employers for compensation; except that the term ''employee'' shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if—

(1) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence was established to the satisfaction of the Railroad Retirement Board before July 1947; or

(2) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of 6 calendar months, whether or not consecutive; or

(3) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but—

(A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age 65 or until August 1945, or

(B) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or

(C) if he was so called he was solely for such reason unable to render service in 6 calendar months as provided in paragraph (2); or

(4) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within 1 year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within 10 years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights;

except that an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937 (45 U.S.C. 228f), or if during the last payroll period before August 29, 1935, in which he rendered service to a carrier he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such payroll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a). The term ''employee'' includes an officer of an employer. The term ''employee'' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(c) Employee representative

For purposes of this chapter, the term ''employee representative'' means any officer or official representative of a railway labor organization other than a labor organization included in the term ''employer'' as defined in subsection (a), who before or after June 29, 1937, was in the service of an employer as defined in subsection (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act (45 U.S.C., chapter 8), as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(d) Service

For purposes of this chapter, an individual is in the service of an employer whether his service is rendered within or without the United States, if—

(1) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and

(2) he renders such service for compensation;

except that an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States, only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if—

(3) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or

(4) the headquarters of such local lodge or division is located in the United States;

and an individual shall be deemed to be in the service of such a general committee only if—

(5) he is representing a local lodge or division described in paragraph (3) or (4) immediately above; or

(6) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or

(7) he acts in the capacity of a general chairman or an assistant general chairman of a

general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to section 1(c) of the Railroad Retirement Act of 1937 (45 U.S.C. 228a) shall be applicable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 percent of his remuneration for such service, no part of such remuneration shall be regarded as compensation;

Provided however, That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof; and the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

(e) Compensation

For purposes of this chapter—

(1) The term ''compensation'' means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers. Such term does not include (i) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability or death, except that this clause does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee, (ii) tips (except as is provided under paragraph (3)), (iii) an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred or reasonably expected to be incurred in the business of the employer provided any such payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment, or (iv) any remuneration which would not (if chapter 21 applied to such remuneration) be treated as wages (as defined in section 3121(a)) by reason of section 3121(a)(5). Such term does not include remuneration for service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F), (J), (M), or (Q), as the case may be. For the purpose of determining the amount of taxes under sections 3201 and 3221, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $25. Compensation for service as a delegate to a national or international convention of a railway labor organization defined as an ''employer'' in subsection (a) of this section shall be disregarded for purposes of determining the amount of taxes due pursuant to this chapter if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his ''years of service'' for purposes of the Railroad Retirement Act. Nothing in the regulations prescribed for purposes of chapter 24 (relating to wage withholding) which provides an exclusion from ''wages'' as used in such chapter shall be construed to require a similar exclusion from ''compensation'' in regulations prescribed for purposes of this chapter.

(2) Application of contribution bases

(A) Compensation in excess of applicable base excluded

(i) In general

The term ''compensation'' does not include that part of remuneration paid during any calendar year to an individual by an employer after remuneration equal to the applicable base has been paid during such calendar year to such individual by such employer for services rendered as an employee to such employer.

(ii) Remuneration not treated as compensation excluded

There shall not be taken into account under clause (i) remuneration which (without regard to clause (i)) is not treated as compensation under this subsection.

(iii) Hospital insurance taxes

Clause (i) shall not apply to—

(I) so much of the rate applicable under section 3201(a) or 3221(a) as does not exceed the rate of tax in effect under section 3101(b), and

(II) so much of the rate applicable under section 3211(a) as does not exceed the rate of tax in effect under section 1401(b).

(B) Applicable base

(i) Tier 1 taxes

Except as provided in clause (ii), the term ''applicable base'' means for any calendar year the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.

(ii) Tier 2 taxes, etc.

For purposes of—

(I) the taxes imposed by sections 3201(b), 3211(b), and 3221(b), and

(II) computing average monthly compensation under section 3(j) of the Railroad Retirement Act of 1974 (except with respect to annuity amounts determined under subsection (a) or (f)(3) of section 3 of such Act),

clause (2) of the first sentence, and the second sentence, of subsection (c) of section 230 of the Social Security Act shall be disregarded.

(C) Successor employers

For purposes of this paragraph, the second sentence of section 3121(a)(1) (relating to successor employers) shall apply, except that—

(i) the term ''services'' shall be substituted for ''employment'' each place it appears,

(ii) the term ''compensation'' shall be substituted for ''remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection)'' each place it appears, and

(iii) the terms ''employer'', ''services'', and ''compensation'' shall have the meanings given such terms by this section.

(3) Solely for purposes of the taxes imposed by section 3201 and other provisions of this chapter insofar as they relate to such taxes, the term ''compensation'' also includes cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is less than $20.

(4)(A) For purposes of applying sections 3201(a), 3211(a), and 3221(a), in the case of payments made to an employee or any of his dependents on account of sickness or accident disability, clause (i) of the second sentence of paragraph (1) shall exclude from the term ''compensation'' only—

(i) payments which are received under a workmen's compensation law, and

(ii) benefits received under the Railroad Retirement Act of 1974.

(B) Notwithstanding any other provision of law, for purposes of the sections specified in subparagraph (A), the term ''compensation'' shall include benefits paid under section 2(a) of the Railroad Unemployment Insurance Act for days of sickness, except to the extent that such sickness (as determined in accordance with standards prescribed by the Railroad Retirement Board) is the result of on-the-job injury.

(C) Under regulations prescribed by the Secretary, subparagraphs (A) and (B) shall not apply to payments made after the expiration of a 6-month period comparable to the 6-month period described in section 3121(a)(4).

(D) Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in compensation solely by reason of subparagraph (A) or (B) shall be treated for purposes of this chapter as the employer with respect to such compensation.

(5) The term ''compensation'' shall not include any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 108(f)(4), 117, or 132.

(6) The term ''compensation'' shall not include any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127.

(7) The term ''compensation'' shall not include any contribution, payment, or service provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans).

(8) Treatment of certain deferred compensation and salary reduction arrangements

(A) Certain employer contributions treated as compensation

Nothing in any paragraph of this subsection (other than paragraph (2)) shall exclude from the term ''compensation'' any amount described in subparagraph (A) or (B) of section 3121(v)(1).

(B) Treatment of certain nonqualified deferred compensation

The rules of section 3121(v)(2) which apply for purposes of chapter 21 shall also apply for purposes of this chapter.

(9) Meals and lodging

The term ''compensation'' shall not include the value of meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119.

(10) Archer MSA contributions

The term ''compensation'' shall not include any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b).

(11) Health savings account contributions

The term ''compensation'' shall not include any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d).

(12) Qualified stock options

The term ''compensation'' shall not include any remuneration on account of—

(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

(B) any disposition by the individual of such stock.

(f) Company

For purposes of this chapter, the term ''company'' includes corporations, associations, and joint-stock companies.

(g) Carrier

For purposes of this chapter, the term ''carrier'' means a rail carrier subject to part A of subtitle IV of title 49.

(h) Tips constituting compensation, time deemed paid

For purposes of this chapter, tips which constitute compensation for purposes of the taxes imposed by section 3201 shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received.

(i) Concurrent employment by 2 or more employers

For purposes of this chapter, if 2 or more related corporations which are employers concurrently employ the same individual and compensate such individual through a common paymaster which is 1 of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

(Aug. 16, 1954, ch. 736, 68A Stat. 434; Aug. 31, 1954, ch. 1164, pt. II, §206(b), 68 Stat. 1040; Pub. L. 89–212, §2(b), Sept. 29, 1965, 79 Stat. 859; Pub. L. 90–624, §1, Oct. 22, 1968, 82 Stat. 1316; Pub. L. 94–92, title II, §203(b), Aug. 9, 1975, 89 Stat. 465; Pub. L. 94–93, title II, §§204–206, Aug. 9, 1975, 89 Stat. 466; Pub. L. 94–455, title XIX, §§1903(a)(10), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1808, 1834; Pub. L. 94–547, §4(b), Oct. 18, 1976, 90 Stat. 2526; Pub. L. 95–473, §2(a)(2)(G), Oct. 17, 1978, 92 Stat. 1465; Pub. L. 97–34, title VII, §§741(d)(2), 743(a)–(c), Aug. 13, 1981, 95 Stat. 347, 348; Pub. L. 97–123, §3(c), Dec. 29, 1981, 95 Stat. 1662; Pub. L. 98–76, title II, §225(a)(1), (3), (b), (c)(1)(C), (6)–(8), Aug. 12, 1983, 97 Stat. 424, 425; Pub. L. 98–369, div. A, title V, §531(d)(2), July 18, 1984, 98 Stat. 884; Pub. L. 98–611, §1(f), Oct. 31, 1984, 98 Stat. 3178; Pub. L. 98–612, §1(c), Oct. 31, 1984, 98 Stat. 3181; Pub. L. 99–514, title I, §122(e)(2), title XVIII, §1899A(41), Oct. 22, 1986, 100 Stat. 2112, 2960; Pub. L. 100–647, title I, §§1001(d)(2)(C)(ii), 1011B(a)(22)(B), Nov. 10, 1988, 102 Stat. 3351, 3486; Pub. L. 101–140, title II, §203(a)(2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title X, §§10205(a), 10206(a), (b), 10207(a), (b), Dec. 19, 1989, 103 Stat. 2474–2476; Pub. L. 101–508, title XI, §§11331(c), 11704(a)(19), Nov. 5, 1990, 104 Stat. 1388–468, 1388–519; Pub. L. 103–66, title XIII, §13207(c), Aug. 10, 1993, 107 Stat. 468; Pub. L. 103–296, title III, §320(a)(1)(D), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 104–88, title III, §304(d), Dec. 29, 1995, 109 Stat. 944; Pub. L. 104–191, title III, §301(c)(2)(A), Aug. 21, 1996, 110 Stat. 2049; Pub. L. 106–554, §1(a)(7) [title II, §202(b)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A–629; Pub. L. 107–90, title II, §204(e)(3), (4), Dec. 21, 2001, 115 Stat. 893; Pub. L. 108–173, title XII, §1201(d)(2)(A), Dec. 8, 2003, 117 Stat. 2477; Pub. L. 108–357, title II, §251(a)(2), title III, §320(b)(2), Oct. 22, 2004, 118 Stat. 1458, 1473.)

REFERENCES IN TEXT

The Railway Labor Act, referred to in subsecs. (a) and (c), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

Sections 1 and 6 of the Railroad Retirement Act of 1937, referred to in subsecs. (b) and (d)(7), were classified to sections 228a and 228f of Title 45. The subject matter of sections 228a and 228f is covered by sections 231 and 231*o* of Title 45.

Section 230 of the Social Security Act, referred to in subsec. (e)(2)(B), is classified to section 430 of Title 42, The Public Health and Welfare.

Section 3(a), (f)(3), (j) of the Railroad Retirement Act of 1974, referred to in subsec. (e)(2)(B)(ii)(II), is classified to section 231b(a), (f)(3), (j) of Title 45, Railroads.

The Railroad Retirement Act of 1974, referred to in subsec. (e)(4)(A)(ii), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

Section 101(a)(15) of the Immigration and Nationality Act, referred to in subsec. (e)(1), is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

Section 2(a) of the Railroad Unemployment Insurance Act, referred to in subsec. (e)(4)(B), is classified to section 352(a) of Title 45, Railroads.

AMENDMENTS

2004—Subsec. (e)(5). Pub. L. 108–357, §320(b)(2), inserted ''108(f)(4),'' after ''74(c),''.

Subsec. (e)(12). Pub. L. 108–357, §251(a)(2), added par. (12).

2003—Subsec. (e)(11). Pub. L. 108–173 added par. (11).

2001—Subsec. (e)(2)(A)(iii)(II). Pub. L. 107–90, §204(e)(3), substituted ''3211(a)'' for ''3211(a)(1)''.

Subsec. (e)(2)(B)(ii)(I). Pub. L. 107–90, §204(e)(4), substituted ''3211(b)'' for ''3211(a)(2)''.

Subsec. (e)(4)(A). Pub. L. 107–90, §204(e)(3), substituted ''3211(a)'' for ''3211(a)(1)''.

2000—Subsec. (e)(10). Pub. L. 106–554 substituted ''Archer MSA'' for ''Medical savings account'' in heading.

1996—Subsec. (e)(10). Pub. L. 104–191 added par. (10).

1995—Subsec. (a). Pub. L. 104–88, §304(d)(1), substituted ''Surface Transportation Board'' for ''Interstate Commerce Commission''.

Subsec. (g). Pub. L. 104–88, §304(d)(2), substituted ''a rail carrier subject to part A of subtitle IV'' for ''an express carrier, sleeping car carrier, or rail carrier providing transportation subject to subchapter I of chapter 105''.

1994—Subsec. (e)(1). Pub. L. 103–296 substituted ''(J), (M), or (Q)'' for ''(J), or (M)'' in two places.

1993—Subsec. (e)(2)(A)(iii). Pub. L. 103–66, §13207(c)(1), added cl. (iii).

Subsec. (e)(2)(B)(i). Pub. L. 103–66, §13207(c)(2), amended heading and text of cl. (i) generally. Prior to amendment, text read as follows:

''(I) IN GENERAL.—Except as provided in subclause (II) of this clause and in clause (ii), the term 'applicable

base' means for any calendar year the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.

''(II) HOSPITAL INSURANCE TAXES.—For purposes of applying so much of the rate applicable under section 3201(a) or 3221(a) (as the case may be) as does not exceed the rate of tax in effect under section 3101(b), and for purposes of applying so much of the rate of tax applicable under section 3211(a)(1) as does not exceed the rate of tax in effect under section 1401(b), the term 'applicable base' means for any calendar year the applicable contribution base determined under section 3121(x)(2) for such calendar year.''

1990—Subsec. (e)(2)(B)(i). Pub. L. 101–508, §11331(c), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''Except as provided in clause (ii), the term 'applicable base' means for any calendar year the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.''

Subsec. (e)(8) to (10). Pub. L. 101–508, §11704(a)(19), redesignated pars. (9) and (10) as (8) and (9), respectively.

1989—Subsec. (e)(1). Pub. L. 101–239, §10207(b), inserted at end ''Nothing in the regulations prescribed for purposes of chapter 24 (relating to wage withholding) which provides an exclusion from 'wages' as used in such chapter shall be construed to require a similar exclusion from 'compensation' in regulations prescribed for purposes of this chapter.''

Pub. L. 101–239, §10206(a), substituted ''(iii)'' for ''or (iii)'' and inserted '', or (iv) any remuneration which would not (if chapter 21 applied to such remuneration) be treated as wages (as defined in section 3121(a)) by reason of section 3121(a)(5)''.

Pub. L. 101–239, §10205(a), inserted ''or death, except that this clause does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee'' before '', (ii) tips''.

Subsec. (e)(8). Pub. L. 101–140 amended subsec. (e) to read as if amendments by Pub. L. 100–647, §1011B(a)(22)(B), had not been enacted, see 1988 Amendment note below.

Subsec. (e)(9). Pub. L. 101–239, §10206(b), added par. (9).

Subsec. (e)(10). Pub. L. 101–239, §10207(a), added par. (10).

1988—Subsec. (e)(1). Pub. L. 100–647, §1001(d)(2)(C)(ii), substituted ''(F), (J), or (M)'' for ''(F) or (J)'' in two places.

Subsec. (e)(8). Pub. L. 100–647, §1011B(a)(22)(B), added par. (8).

1986—Subsec. (e)(5). Pub. L. 99–514, §122(e)(2), inserted reference to section 74(c).

Subsec. (e)(6), (7). Pub. L. 99–514, §1899A(41), redesignated par. (6), relating to amounts excludable under section 120, as (7).

1984—Subsec. (e)(5). Pub. L. 98–369, §531(d)(2), added par. (5).

Subsec. (e)(6). Pub. L. 98–611 added par. (6) relating to amounts excludable under section 127.

Pub. L. 98–612 added par. (6) relating to amounts excludable under section 120.

1983—Subsec. (e)(1). Pub. L. 98–76, §225(a)(3), struck out provisions that compensation which was paid in one calendar month but which would be payable in a prior or subsequent taxable month but for the fact prescribed date of payment would fall on a Saturday, Sunday or legal holiday would be deemed to have been paid in such prior or subsequent taxable month and that compensation which was earned during the period for which the Secretary would require a return of taxes under this chapter to be made and which was payable during the calendar month following such period would be deemed to have been paid during such period only.

Subsec. (e)(2). Pub. L. 98–76, §225(a)(1), amended par. (2) generally, substituting provisions which exclude compensation in excess of applicable base, which define ''applicable base'', and which provide for the applicability of successor employer provisions to this paragraph, for provisions that a payment made by an employer to an individual through the employer's payroll would be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment was made, that an employee receiving retroactive wage payments would be deemed to be paid compensation in the period during which such compensation was earned only upon a written request by such employee, made within six months following the payment, and a showing that such compensation was earned during a period other than the period in which it was paid, that an employee would be deemed to be paid ''for time lost'' the amount he was paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he was paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation, and that if a payment was made by an employer with respect to a personal injury and included pay for time lost, the total payment would be deemed to be paid for time lost unless, at the time of payment, a part of such payment was specifically apportioned to factors other than time lost, in which event only such part of the payment as was not so apportioned would be deemed to be paid for time lost.

Subsec. (e)(3). Pub. L. 98–76, §225(c)(1)(C), (6), substituted ''taxes imposed by section 3201'' for ''tax imposed by section 3201'', and ''such taxes'' for ''such tax''.

Subsec. (e)(4)(A). Pub. L. 98–76, §225(c)(7), substituted ''3201(a), 3211(a)(1), and 3221(a)'' for ''3201(b) and 3221(b) (and so much of section 3211(a) as relates to the rates of the taxes imposed by sections 3101 and 3111)''.

Subsec. (h). Pub. L. 98–76, §225(c)(8), substituted ''taxes imposed by section 3201'' for ''tax imposed under section 3201'', and struck out ''; and tips so deemed to be paid in any month shall be deemed paid for services rendered in such month'' after ''time received''.

Subsec. (i). Pub. L. 98–76, §225(b), added subsec. (i).

1981—Subsec. (e)(1). Pub. L. 97–34, §743(a), inserted after third sentence provision that ''Compensation which is paid in one calendar month but which would be payable in a prior or subsequent taxable month but for the fact that prescribed date of payment would fall on a Saturday, Sunday or legal holiday shall be deemed to have been paid in such prior or subsequent taxable month.''

Pub. L. 97–34, §741(d)(2), struck out cl. (iii) exclusion from term ''compensation'' the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 3201, redesignated as cl. (iii) provisions formerly designated (iv).

Subsec. (e)(2). Pub. L. 97–34, §743(b), (c), inserted first sentence respecting presumption of a payment through the employer's payroll as being compensation for services rendered as an employee in the period with respect to which payment is made, and in second sentence following ''an employee'' inserted ''receiving retroactive wage payments''.

Subsec. (e)(4). Pub. L. 97–123 added par. (4).

1978—Subsec. (g). Pub. L. 95–473 substituted ''express carrier, sleeping car carrier, or rail carrier providing transportation subject to subchapter I of chapter 105 of title 49'' for ''express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act (49 U.S.C., chapter 1)''.

1976—Subsec. (a). Pub. L. 94–455, §§1903(a)(10)(A), 1906(b)(13)(A), struck out ''44 Stat. 577;'' before ''45 U.S.C., chapter 8'' and ''or his delegate'' after ''Secretary'', respectively.

Subsec. (b). Pub. L. 94–455, §1903(a)(10)(B), struck out in provisions following par. (4) ''50 Stat. 312;'' before ''45 U.S.C. 228f''.

Subsec. (c). Pub. L. 94–455, §1903(a)(10)(C), struck out ''44 Stat. 577;'' before ''45 U.S.C. chapter 8''.

Subsec. (d)(7). Pub. L. 94–455, §1903(a)(10)(D), struck out ''50 Stat. 308;'' before ''45 U.S.C. 228a''.

Subsec. (e)(1). Pub. L. 94–547 provided that ''compensation'' not include amount of any payment (includ-

ing any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability, or an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred or reasonably expected to be incurred in the business of the employer provided any such payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment.

Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1975—Subsec. (e)(1). Pub. L. 94–93, § 204, substituted ''paid to an individual for services rendered as an employee to one or more employers'' for ''earned by an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost''.

Pub. L. 94–92 increased from $3 to $25 amount of compensation earned in the service of a local lodge or division of a railway-labor-organization employer to be disregarded with respect to any calendar month in the determination of amount of taxes under sections 3201 and 3221.

Subsec. (e)(2). Pub. L. 94–93, §§ 205, 206, substituted provision that an employee shall be deemed to be paid compensation in the period during which such compensation is earned only upon a written request by such employee, made within six months following the payment, and a showing that such compensation was earned during a period other than the period in which it was paid for provision that a payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which payment is made.

1968—Subsec. (e)(1). Pub. L. 90–624 inserted provision excluding remuneration for service performed by nonresident alien individuals temporarily in the United States as participants in a cultural exchange or training program.

1965—Subsec. (e)(1). Pub. L. 89–212, § 2(b)(1), inserted ''(except as is provided under paragraph (3))''.

Subsec. (e)(3). Pub. L. 89–212, § 2(b)(2), added par. (3).

Subsec. (h). Pub. L. 89–212, § 2(b)(3), added subsec. (h).

1954—Subsec. (e)(1). Act Aug. 31, 1954, excluded from taxation compensation, for service as a delegate to a national or international convention of a railway labor organization, of any person who has no other previous creditable service.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 251(a)(2) of Pub. L. 108–357 applicable to stock acquired pursuant to options exercised after Oct. 22, 2004, see section 251(d) of Pub. L. 108–357, set out as a note under section 421 of this title.

Amendment by section 320(b)(2) of Pub. L. 108–357 applicable to amounts received by an individual in taxable years beginning after Dec. 31, 2003, see section 320(c) of Pub. L. 108–357, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–90 applicable to calendar years beginning after Dec. 31, 2001, see section 204(f) of Pub. L. 107–90, set out as an Effective and Termination Dates of 2001 Amendments note under section 24 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103–296, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to 1994 and later calendar years, see section 13207(e) of Pub. L. 103–66, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11331(c) of Pub. L. 101–508 applicable to 1991 and later calendar years, see section 11331(e) of Pub. L. 101–508, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 10205(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to—

''(A) group-term life insurance coverage in effect after December 31, 1989, and

''(B) remuneration paid before January 1, 1990, which the employer treated as compensation when paid.

''(2) EXCEPTION.—The amendment made by subsection (a) shall not apply with respect to payments by the employer (or a successor of such employer) for group-term life insurance for such employer's former employees who separated from employment with the employer on or before December 31, 1989, to the extent that such payments are not for coverage for any such employee for any period for which such employee is employed by such employer (or a successor of such employer) after the date of such separation.

''(3) BENEFIT DETERMINATIONS TO TAKE INTO ACCOUNT REMUNERATION ON WHICH TAX PAID.—The term 'compensation' as defined in section 1(h) of the Railroad Retirement Act of 1974 [45 U.S.C. 231(h)] includes any remuneration which is included in the term 'compensation' as defined in section 3231(e)(1) of the Internal Revenue Code of 1986 by reason of the amendment made by subsection (a).''

Section 10206(c) of Pub. L. 101–239 provided that:

''(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to remuneration paid after December 31, 1989.

''(2) SUBSECTION (b).—Except as otherwise provided in this subsection—

''(A) IN GENERAL.—The amendment made by subsection (b) [amending this section] shall apply to—

''(i) remuneration paid after December 31, 1989, and

''(ii) remuneration paid before January 1, 1990, which the employer treated as compensation when paid.

''(B) BENEFIT DETERMINATIONS TO TAKE INTO ACCOUNT REMUNERATION ON WHICH TAX PAID.—The term 'compensation' as defined in section 1(h) of the Railroad Retirement Act of 1974 [45 U.S.C. 231(h)] includes any remuneration which is included in the term 'compensation' as defined in section 3231(e)(1) of the Internal Revenue Code of 1986 by reason of the amendment made by subsection (b).

''(3) SPECIAL RULE FOR CERTAIN PAYMENTS.—For purposes of applying the amendment made by subsection (b) to remuneration paid after December 31, 1989, which would have been taken into account before January 1, 1990, if such amendments had applied to periods before January 1, 1990, such remuneration shall be taken into account when paid (or, at the election of the payor, at the time which would be appropriate if such amendments had applied).

''(4) EXCEPTION FOR CERTAIN 401(k) CONTRIBUTIONS.—The amendment made by subsection (b) shall not apply to employer contributions made during 1990 and attributable to services performed during 1989 under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986) if, under the terms of the arrangement as in effect on June 15, 1989—

''(A) the employee makes an election with respect to such contributions before January 1, 1990, and

''(B) the employer identifies the amount of such contribution before January 1, 1990.

''(5) SPECIAL RULE WITH RESPECT TO NONQUALIFIED DEFERRED COMPENSATION PLANS.—In the case of an agreement in existence on June 15, 1989, between a nonqualified deferred compensation plan (as defined in section 3121(v)(2)(C) of such Code) and an individual, the amendment made by subsection (b) shall apply with respect to services performed by the individual after December 31, 1989. The preceding sentence shall not apply in the case of a plan to which section 457(a) of such Code applies.''

Section 10207(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section] shall apply to remuneration paid after December 31, 1989.''

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(d)(2)(C)(ii) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 1011B(a)(22)(B) of Pub. L. 100–647 not applicable to any individual who separated from service with the employer before Jan. 1, 1989, see section 1011B(a)(22)(F) of Pub. L. 100–647, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 122(e)(2) of Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 1(d)(3) of Pub. L. 98–612 provided that: ''The amendment made by subsection (c) [amending this section] shall apply to remuneration paid after December 31, 1984.''

Amendment by Pub. L. 98–611 applicable to remuneration paid after Dec. 31, 1984, see section 1(g)(3) of Pub. L. 98–611, set out as a note under section 127 of this title.

Amendment by Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98–76, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1981 AMENDMENTS

Amendment by Pub. L. 97–123 applicable to remuneration paid after Dec. 31, 1981, except as otherwise provided, see section 3(g) of Pub. L. 97–123, set out as a note under section 3121 of this title.

Amendment by section 741(d)(2) of Pub. L. 97–34 applicable to compensation paid for services rendered after Sept. 30, 1981, see section 741(e) of Pub. L. 97–34, set out as a note under section 3201 of this title.

Section 743(d) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section] shall apply for taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 4(c)(2) of Pub. L. 94–547 provided that: ''The amendments made by subsection (b) of this section [amending this section] shall apply with respect to taxable years ending after December 31, 1953: *Provided, however*, That any taxes paid under the Railroad Retirement Tax Act [this chapter] prior to the date on which this Act is enacted [Oct. 18, 1976] shall not be affected or adjusted by reason of the amendments made by such subsection (b) except to the extent that the applicable period of limitation for the assessment of tax and the filing of a claim for credit or refund has not expired prior to the date on which this Act is enacted. If the applicable period of limitation for the filing of a claim for credit or refund would expire within the six-month period following the date on which this Act is enacted, the applicable period for the filing of such a claim for credit or refund shall be extended to include such six-month period.''

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by sections 204 and 205 of Pub. L. 94–93 applicable for taxable years ending on or after Aug. 9, 1975, and for taxable years ending before Aug. 9, 1975, as to which the period for assessment and collection of tax or the filing of a claim for credit or refund has not expired on Aug. 9, 1975, and amendment by section 206 of Pub. L. 94–93 applicable for taxable years beginning on or after Aug. 9, 1975: *Provided, however*, That with respect to payment made prior to Aug. 9, 1975, the employee may file a written request under section 206 of Pub. L. 94–93 within six months after Aug. 9, 1975, see section 207 of Pub. L. 94–93, set out as a note under section 3201 of this title.

Amendment by Pub. L. 94–92 effective Jan. 1, 1975, and applicable only with respect to compensation paid for services rendered on or after Jan. 1, 1975, see section 203(c) of Pub. L. 94–92, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 4(a) of Pub. L. 90–624, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendments made by the first two sections of this Act [amending this section and section 228a of Title 45, Railroads] shall apply with respect to service performed after December 31, 1961.

''(2) Notwithstanding the expiration before the date of the enactment of this Act [Oct. 22, 1968] or within 6 months after such date of the period for filing claim for credit or refund, claim for credit or refund of any overpayment of any tax imposed by chapter 22 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, 26 U.S.C. 3201 et seq.] attributable to the amendment made by the first section of this Act [amending this section] may be filed at any time within one year after such date of enactment.

''(3) Any credit or refund of an overpayment of the tax imposed by section 3201 or 3211 of the Internal Rev-

enue Code of 1986 which is attributable to the amendment made by the first section of this Act shall be appropriately adjusted for any lump-sum payment which has been made under section 5(f)(2) of the Railroad Retirement Act of 1937 [section 228e(f)(2) of Title 45] before the date of the allowance of such credit or the making of such refund.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–212 effective only with respect to tips received after 1965, see section 6 of Pub. L. 89–212, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 31, 1954, effective as if enacted as a part of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], see section 407 of act Aug. 31, 1954, as amended, set out as a note under section 3201 of this title.

REGULATIONS

For provisions requiring that the regulations prescribed under subsec. (e)(4) of this section prescribe procedures under which, if (with respect to any employee) the third party promptly (A) withholds the employee portion of the taxes involved, (B) deposits such portion under section 6302 of such Code, and (C) notifies the employer of the amount of the wages or compensation involved, the employer (and not the third party) shall be liable for the employer portion of the taxes involved and for meeting the requirements of section 6051 of this title (relating to receipts for employees) with respect to the wages or compensation involved, see section 3(d) of Pub. L. 97–123, set out as a note under section 3121 of this title.

EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS

For purposes of this chapter, the term ''compensation'' shall not include the amount of any refund required under section 421 of Pub. L. 100–360, 42 U.S.C. 1395b note, see section 10202 of Pub. L. 101–239, set out as a note under section 1395b of Title 42, The Public Health and Welfare.

PAYMENTS UNDER STATE TEMPORARY DISABILITY LAW TO BE TREATED AS REMUNERATION FOR SERVICE

For purposes of applying subsec. (e) of this section with respect to subsec. (e)(4) of this section, payments under a State temporary disability law to be treated as remuneration for service, see section 3(e) of Pub. L. 97–123, set out as a note under section 3121 of this title.

§ 3232. Court jurisdiction

The several district courts of the United States shall have jurisdiction to entertain an application by the Attorney General on behalf of the Secretary to compel an employee or other person residing within the jurisdiction of the court or an employer subject to service of process within its jurisdiction to comply with any obligations imposed on such employee, employer, or other person under the provisions of this chapter. The jurisdiction herein specifically conferred upon such Federal courts shall not be held exclusive of any jurisdiction otherwise possessed by such courts to entertain civil actions, whether legal or equitable in nature, in aid of the enforcement of rights or obligations arising under the provisions of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 437; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

§ 3233. Short title

This chapter may be cited as the ''Railroad Retirement Tax Act.''

(Aug. 16, 1954, ch. 736, 68A Stat. 438.)

Subchapter E—Tier 2 Tax Rate Determination

Sec.
3241. Determination of tier 2 tax rate based on average account benefits ratio.

§ 3241. Determination of tier 2 tax rate based on average account benefits ratio

(a) In general

For purposes of sections 3201(b), 3211(b), and 3221(b), the applicable percentage for any calendar year is the percentage determined in accordance with the table in subsection (b).

(b) Tax rate schedule

Average account benefits ratio		Applicable percentage for sections 3211(b) and 3221(b)	Applicable percentage for section 3201(b)
At least	But less than		
	2.5	22.1	4.9
2.5	3.0	18.1	4.9
3.0	3.5	15.1	4.9
3.5	4.0	14.1	4.9
4.0	6.1	13.1	4.9
6.1	6.5	12.6	4.4
6.5	7.0	12.1	3.9
7.0	7.5	11.6	3.4
7.5	8.0	11.1	2.9
8.0	8.5	10.1	1.9
8.5	9.0	9.1	0.9
9.0		8.2	0

(c) Definitions related to determination of rates of tax

(1) Average account benefits ratio

For purposes of this section, the term ''average account benefits ratio'' means, with respect to any calendar year, the average determined by the Secretary of the account benefits ratios for the 10 most recent fiscal years ending before such calendar year. If the amount determined under the preceding sentence is not a multiple of 0.1, such amount shall be increased to the next highest multiple of 0.1.

(2) Account benefits ratio

For purposes of this section, the term ''account benefits ratio'' means, with respect to any fiscal year, the amount determined by the Railroad Retirement Board by dividing the fair market value of the assets in the Railroad Retirement Account and of the National Railroad Retirement Investment Trust (and for years before 2002, the Social Security Equivalent Benefits Account) as of the close of such fiscal year by the total benefits and administrative expenses paid from the Railroad Retirement Account and the National Railroad Retirement Investment Trust during such fiscal year.

(d) Notice

No later than December 1 of each calendar year, the Secretary shall publish a notice in the Federal Register of the rates of tax determined under this section which are applicable for the following calendar year.

(Added Pub. L. 107–90, title II, § 204(d), Dec. 21, 2001, 115 Stat. 892.)

EFFECTIVE DATE

Subchapter applicable to calendar years beginning after Dec. 31, 2001, see section 204(f) of Pub. L. 107–90, set out as an Effective and Termination Dates of 2001 Amendments note under section 24 of this title.

CHAPTER 23—FEDERAL UNEMPLOYMENT TAX ACT

Sec.
3301. Rate of tax.
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AMENDMENTS

1976—Pub. L. 94–566, title I, § 115(c)(4), Oct. 20, 1976, 90 Stat. 2671, substituted ''services performed for nonprofit organizations or governmental entities'' for ''certain services performed for nonprofit organizations and for State hospitals and institutions of higher education'' in item 3309.

1970—Pub. L. 91–373, title I, §§ 104(b)(2), 131(b)(3), Aug. 10, 1970, 84 Stat. 699, 705, added items 3309 and 3310 and redesignated former item 3309 as 3311.

1960—Pub. L. 86–778, title V, § 531(d)(2), Sept. 13, 1960, 74 Stat. 984, added item 3308 and redesignated former item 3308 as 3309.

§ 3301. Rate of tax

There is hereby imposed on every employer (as defined in section 3306(a)) for each calendar year an excise tax, with respect to having individuals in his employ, equal to—

(1) 6.2 percent in the case of calendar years 1988 through 2010 and the first 6 months of calendar year 2011; or

(2) 6.0 percent in the case of the remainder of calendar year 2011 and each calendar year thereafter;

of the total wages (as defined in section 3306(b)) paid by him during the calendar year (or portion of the calendar year) with respect to employment (as defined in section 3306(c)).

(Aug. 16, 1954, ch. 736, 68A Stat. 439; Pub. L. 86–778, title V, § 523(a), Sept. 13, 1960, 74 Stat. 980; Pub. L. 87–6, § 14(a), Mar. 24, 1961, 75 Stat. 16; Pub. L. 88–31, § 2(a), May 29, 1963, 77 Stat. 51; Pub. L. 91–373, title III, § 301(a), Aug. 10, 1970, 84 Stat. 713; Pub. L. 92–329, § 2(a), June 30, 1972, 86 Stat. 398; Pub. L. 94–455, title XIX, § 1903(a)(11), Oct. 4, 1976, 90 Stat. 1808; Pub. L. 94–566, title II, § 211(b), Oct. 20, 1976, 90 Stat. 2676; Pub. L. 97–248, title II, § 271(b)(1), (c)(1), Sept. 3, 1982, 96 Stat. 554, 555; Pub. L. 99–514, title XVIII, § 1899A(42), Oct. 22, 1986, 100 Stat. 2960; Pub. L. 100–203, title IX, § 9153(a), Dec. 22, 1987, 101 Stat. 1330–326; Pub. L. 101–508, title XI, § 11333(a), Nov. 5, 1990, 104 Stat. 1388–470; Pub. L. 102–164, title IV, § 402, Nov. 15, 1991, 105 Stat. 1061; Pub. L. 103–66, title XIII, § 13751, Aug. 10, 1993, 107 Stat. 664; Pub. L. 105–34, title X, § 1035, Aug. 5, 1997, 111 Stat. 937; Pub. L. 110–140, title XV, § 1501(a), Dec. 19, 2007, 121 Stat. 1800; Pub. L. 110–343, div. B, title IV, § 404(a), Oct. 3, 2008, 122 Stat. 3860; Pub. L. 111–92, § 10(a), Nov. 6, 2009, 123 Stat. 2988.)

AMENDMENTS

2009—Pub. L. 111–92 inserted ''(or portion of the calendar year)'' after ''during the calendar year'' in concluding provisions and substituted ''through 2010 and the first 6 months of calendar year 2011'' for ''through 2009'' in par. (1) and ''the remainder of calendar year 2011'' for ''calendar year 2010'' in par. (2).

2008—Par. (1). Pub. L. 110–343, § 404(a)(1), substituted ''through 2009'' for ''through 2008''.

Par. (2). Pub. L. 110–343, § 404(a)(2), substituted ''calendar year 2010'' for ''calendar year 2009''.

2007—Par. (1). Pub. L. 110–140, § 1501(a)(1), substituted ''2008'' for ''2007''.

Par. (2). Pub. L. 110–140, § 1501(a)(2), substituted ''2009'' for ''2008''.

1997—Par. (1). Pub. L. 105–34, § 1035(1), substituted ''2007'' for ''1998''.

Par. (2). Pub. L. 105–34, § 1035(2), substituted ''2008'' for ''1999''.

1993—Par. (1). Pub. L. 103–66, § 13751(1), substituted ''1998'' for ''1996''.

Par. (2). Pub. L. 103–66, § 13751(2), substituted ''1999'' for ''1997''.

1991—Par. (1). Pub. L. 102–164, § 402(1), substituted ''1996'' for ''1995''.

Par. (2). Pub. L. 102–164, § 402(2), substituted ''1997'' for ''1996''.

1990—Par. (1). Pub. L. 101–508, § 11333(a)(1), substituted ''1988 through 1995'' for ''1988, 1989, and 1990''.

Par. (2). Pub. L. 101–508, § 11333(a)(2), substituted ''1996'' for ''1991''.

1987—Pars. (1), (2). Pub. L. 100–203 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

''(1) 6.2 percent, in the case of a calendar year beginning before the first calendar year after 1976, as of January 1 of which there is not a balance of repayable advances made to the extended unemployment compensation account (established by section 905(a) of the Social Security Act); or

''(2) 6.0 percent, in the case of such first calendar year and each calendar year thereafter;''.

1986—Par. (1). Pub. L. 99–514 substituted ''unemployment'' for ''unemployed''.

1982—Par. (1). Pub. L. 97–248, § 271(c)(1)(A), substituted ''6.2 percent'' for ''3.5 percent''.

Pub. L. 97–248, § 271(b)(1), substituted ''3.5 percent'' for ''3.4 percent''.

Par. (2). Pub. L. 97–248, § 271(c)(1)(B), substituted ''6.0 percent'' for ''3.2 percent''.

1976—Pub. L. 94–566 substituted provisions imposing an excise tax equal to 3.4 percent, in the case of a calendar year beginning before the first calendar year after 1976, as of January 1 of which there is not a balance of repayable advances made to the extended unemployed compensation account (established by section 905(a) of the Social Security Act), or 3.2 percent, in the case of such first calendar year and each calendar year thereafter, of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)), for provisions imposing an excise tax for the calendar year 1970 and each calendar year thereafter, with respect to having individuals in his employ, equal to 3.2 percent of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to

employment (as defined in section 3306(c)) and provisions that, in the case of wages paid during the calendar year 1973, the rate of such tax should be 3.28 percent in lieu of 3.2 percent.

Pub. L. 94–455 substituted ''each calendar year'' for ''the calendar year 1970 and each calendar year thereafter'' and struck out provisions relating to the rate of tax in the case of wages paid during the calendar year 1973.

1972—Pub. L. 92–329 inserted provisions setting forth the rate of tax in the case of wages paid during the calendar year 1973.

1970—Pub. L. 91–373 increased the rate from 3.1 percent to 3.2 percent and struck out provisions setting special rates for wages paid during 1962 and 1963.

1963—Pub. L. 88–31 reduced the tax rate for the year 1963 from 3.5 percent to 3.35 percent.

1961—Pub. L. 87–6 provided for a tax rate of 3.5 percent for calendar years 1962 and 1963.

1960—Pub. L. 86–778 substituted ''1961'' for ''1955'' and ''3.1 percent'' for ''3 percent''.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–92, § 10(b), Nov. 6, 2009, 123 Stat. 2989, provided that: ''The amendments made by this section [amending this section] shall apply to wages paid after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title IV, § 404(b), Oct. 3, 2008, 122 Stat. 3860, provided that: ''The amendments made by this section [amending this section] shall apply to wages paid after December 31, 2008.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–140, title XV, § 1501(b), Dec. 19, 2007, 121 Stat. 1800, provided that: ''The amendments made by this section [amending this section] shall apply to wages paid after December 31, 2007.''

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11333(b) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply to wages paid after December 31, 1990.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9153(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to wages paid on or after January 1, 1988.''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 271(d)(1), (2), formerly 271(b)(1), (2), of Pub. L. 97–248, as redesignated by Pub. L. 98–601, § 1(a), Oct. 30, 1984, 98 Stat. 3147, provided that:

''(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) [amending this section, sections 3306 and 6157 of this title, and sections 1101 and 1105 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1982.

''(2) SUBSECTION (c).—The amendments made by subsection (c) [amending this section, sections 3302 and 6157 of this title, and section 1101 of Title 42] shall apply to remuneration paid after December 31, 1984.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 211(d)(2) of Pub. L. 94–566 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to remuneration paid after December 31, 1976.''

EFFECTIVE DATE OF 1970 AMENDMENT

Section 301(a) of Pub. L. 91–373 provided that the amendment made by that section is effective with respect to remuneration paid after Dec. 31, 1969.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 523(c) of Pub. L. 86–778 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only with respect to the calendar year 1961 and calendar years thereafter.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 3302. Credits against tax

(a) Contributions to State unemployment funds

(1) The taxpayer may, to the extent provided in this subsection and subsection (c), credit against the tax imposed by section 3301 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State which is certified as provided in section 3304 for the 12-month period ending on October 31 of such year.

(2) The credit shall be permitted against the tax for the taxable year only for the amount of contributions paid with respect to such taxable year.

(3) The credit against the tax for any taxable year shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required under section 6071 to file a return for such year; except that credit shall be permitted for contributions paid after such last day, but such credit shall not exceed 90 percent of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day.

(4) Upon the payment of contributions into the unemployment fund of a State which are required under the unemployment compensation law of that State with respect to remuneration on the basis of which, prior to such payment into the proper fund, the taxpayer erroneously paid an amount as contributions under another unemployment compensation law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions with respect to services subject to such other law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made on the date the return for the taxable year was filed under section 6071.

(5) In the case of wages paid by the trustee of an estate under title 11 of the United States Code, if the failure to pay contributions on time was without fault by the trustee, paragraph (3) shall be applied by substituting ''100 percent'' for ''90 percent''.

(b) Additional credit

In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 3301 for any taxable year an amount, with respect to the unemployment

compensation law of each State certified as provided in section 3303 for the 12-month period ending on October 31 of such year, or with respect to any provisions thereof so certified, equal to the amount, if any, by which the contributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have been required to pay if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in such 12-month period to any person having individuals in his employ, or to a rate of 5.4 percent, whichever rate is lower.

(c) Limit on total credits

(1) The total credits allowed to a taxpayer under this section shall not exceed 90 percent of the tax against which such credits are allowable.

(2) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act, then the total credits (after applying subsections (a) and (b) and paragraph (1) of this subsection) otherwise allowable under this section for the taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A)(i) in the case of a taxable year beginning with the second consecutive January 1 as of the beginning of which there is a balance of such advances, by 5 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

(ii) in the case of any succeeding taxable year beginning with a consecutive January 1 as of the beginning of which there is a balance of such advances, by an additional 5 percent, for each such succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State;

(B) in the case of a taxable year beginning with the third or fourth consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any), multiplied by a fraction, the numerator of which is the State's average annual wage in covered employment for the calendar year in which the determination is made and the denominator of which is the wage base under this chapter, by which—

(i) 2.7 percent multiplied by a fraction, the numerator of which is the wage base under this chapter and the denominator of which is the estimated United States average annual wage in covered employment for the calendar year in which the determination is to be made, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year; and

(C) in the case of a taxable year beginning with the fifth or any succeeding consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any) by which—

(i) the 5-year benefit cost rate applicable to such State for such taxable year or (if higher) 2.7 percent, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year.

The provisions of the preceding sentence shall not be applicable with respect to the taxable year beginning January 1, 1975, or any succeeding taxable year which begins before January 1, 1980; and, for purposes of such sentence, January 1, 1980, shall be deemed to be the first January 1 occurring after January 1, 1974, and consecutive taxable years in the period commencing January 1, 1980, shall be determined as if the taxable year which begins on January 1, 1980, were the taxable year immediately succeeding the taxable year which began on January 1, 1974. Subparagraph (C) shall not apply with respect to any taxable year to which it would otherwise apply (but subparagraph (B) shall apply to such taxable year) if the Secretary of Labor determines (on or before November 10 of such taxable year) that the State meets the requirements of subsection (f)(2)(B) for such taxable year.

(3) If the Secretary of Labor determines that a State, or State agency, has not—

(A) entered into the agreement described in section 239 of the Trade Act of 1974, with the Secretary of Labor before July 15, 1975, or

(B) fulfilled its commitments under an agreement with the Secretary of Labor as described in section 239 of the Trade Act of 1974,

then, in the case of a taxpayer subject to the unemployment compensation law of such State, the total credits (after applying subsections (a) and (b) and paragraphs (1) and (2) of this section) otherwise allowable under this section for a year during which such State or agency does not enter into or fulfill such an agreement shall be reduced by 7½ percent of the tax imposed with respect to wages paid by such taxpayer during such year which are attributable to such State.

(d) Definitions and special rules relating to subsection (c)

(1) Rate of tax deemed to be 6 percent

In applying subsection (c), the tax imposed by section 3301 shall be computed at the rate of 6 percent in lieu of the rate provided by such section.

(2) Wages attributable to a particular State

For purposes of subsection (c), wages shall be attributable to a particular State if they are subject to the unemployment compensation law of the State, or (if not subject to the unemployment compensation law of any State) if they are determined (under rules or regulations prescribed by the Secretary) to be attributable to such State.

(3) Additional taxes inapplicable where advances are repaid before November 10 of taxable year

Paragraph (2) of subsection (c) shall not apply with respect to any State for the taxable

year if (as of the beginning of November 10 of such year) there is no balance of advances referred to in such paragraph.

(4) Average employer contribution rate

For purposes of subparagraphs (B) and (C) of subsection (c)(2), the average employer contribution rate for any State for any calendar year is that percentage obtained by dividing—

(A) the total of the contributions paid into the State unemployment fund with respect to such calendar year, by

(B)(i) for purposes of subparagraph (B) of subsection (c)(2), the total of the wages (as determined without any limitation on amount) attributable to such State subject to contributions under this chapter with respect to such calendar year, and

(ii) for purposes of subparagraph (C) of subsection (c)(2), the total of the remuneration subject to contributions under the State unemployment compensation law with respect to such calendar year.

For purposes of subparagraph (C) of subsection (c)(2), if the average employer contribution rate for any State for any calendar year (determined without regard to this sentence) equals or exceeds 2.7 percent, such rate shall be determined by increasing the amount taken into account under subparagraph (A) of the preceding sentence by the aggregate amount of employee payments (if any) into the unemployment fund of such State with respect to such calendar year which are to be used solely in the payment of unemployment compensation.

(5) 5-year benefit cost rate

For purposes of subparagraph (C) of subsection (c)(2), the 5-year benefit cost rate applicable to any State for any taxable year is that percentage obtained by dividing—

(A) one-fifth of the total of the compensation paid under the State unemployment compensation law during the 5-year period ending at the close of the second calendar year preceding such taxable year, by

(B) the total of the remuneration subject to contributions under the State unemployment compensation law with respect to the first calendar year preceding such taxable year.

(6) Rounding

If any percentage referred to in either subparagraph (B) or (C) of subsection (c)(2) is not a multiple of .1 percent, it shall be rounded to the nearest multiple of .1 percent.

(7) Determination and certification of percentages

The percentage referred to in subsection (c)(2)(B) or (C) for any taxable year for any State having a balance referred to therein shall be determined by the Secretary of Labor, and shall be certified by him to the Secretary of the Treasury before June 1 of such year, on the basis of a report furnished by such State to the Secretary of Labor before May 1 of such year. Any such State report shall be made as of the close of March 31 of the taxable year, and shall be made on such forms, and shall contain such information, as the Secretary of Labor deems necessary to the performance of his duties under this section.

(e) Successor employer

Subject to the limits provided by subsection (c), if—

(1) an employer acquires during any calendar year substantially all the property used in the trade or business of another person, or used in a separate unit of a trade or business of such other person, and immediately after the acquisition employs in his trade or business one or more individuals who immediately prior to the acquisition were employed in the trade or business of such other person, and

(2) such other person is not an employer for the calendar year in which the acquisition takes place,

then, for the calendar year in which the acquisition takes place, in addition to the credits allowed under subsections (a) and (b), such employer may credit against the tax imposed by section 3301 for such year an amount equal to the credits which (without regard to subsection (c)) would have been allowable to such other person under subsections (a) and (b) and this subsection for such year, if such other person had been an employer, with respect to remuneration subject to contributions under the unemployment compensation law of a State paid by such other person to the individual or individuals described in paragraph (1).

(f) Limitation on credit reduction

(1) Limitation

In the case of any State which meets the requirements of paragraph (2) with respect to any taxable year the reduction under subsection (c)(2) in credits otherwise applicable to taxpayers subject to the unemployment compensation law of such State shall not exceed the greater of—

(A) the reduction which was in effect with respect to such State under subsection (c)(2) for the preceding taxable year, or

(B) 0.6 percent of the wages paid by the taxpayer during such taxable year which are attributable to such State.

(2) Requirements

The requirements of this paragraph are met by any State with respect to any taxable year if the Secretary of Labor determines (on or before November 10 of such taxable year) that—

(A) no State action was taken during the 12-month period ending on September 30 of such taxable year (excluding any action required under State law as in effect prior to the date of the enactment of this subsection) which has resulted or will result in a reduction in such State's unemployment tax effort (as defined by the Secretary of Labor in regulations),

(B) no State action was taken during the 12-month period ending on September 30 of such taxable year (excluding any action required under State law as in effect prior to the date of the enactment of this subsection) which has resulted or will result in a net decrease in the solvency of the State unem-

ployment compensation system (as defined by the Secretary of Labor in regulations),

(C) the State unemployment tax rate for the taxable year equals or exceeds the average benefit cost ratio for calendar years in the 5-calendar year period ending with the last calendar year before the taxable year, and

(D) the outstanding balance for such State of advances under title XII of the Social Security Act on September 30 of such taxable year was not greater than the outstanding balance for such State of such advances on September 30 of the third preceding taxable year (or, for purposes of applying this subparagraph to taxable year 1983, September 30, 1981).

The requirements of subparagraphs (C) and (D) shall not apply to taxable years 1981 and 1982.

(3) Credit reductions for subsequent years

If the credit reduction under subsection (c)(2) is limited by reason of paragraph (1) of this subsection for any taxable year, for purposes of applying subsection (c)(2) to subsequent taxable years (including years after 1987), the taxable year for which the credit reduction was so limited (and January 1 thereof) shall not be taken into account.

(4) State unemployment tax rate

For purposes of this subsection—

(A) In general

The State unemployment tax rate for any taxable year is the percentage obtained by dividing—

(i) the total amount of contributions paid into the State unemployment fund with respect to such taxable year, by

(ii) the total amount of the remuneration subject to contributions under the State unemployment compensation law with respect to such taxable year (determined without regard to any limitation on the amount of wages subject to contribution under the State law).

(B) Treatment of additional tax under this chapter

(i) Taxable year 1983

In the case of taxable year 1983, any additional tax imposed under this chapter with respect to any State by reason of subsection (c)(2) shall be treated as contributions paid into the State unemployment fund with respect to such taxable year.

(ii) Taxable year 1984

In the case of taxable year 1984, any additional tax imposed under this chapter with respect to any State by reason of subsection (c)(2) shall (to the extent such additional tax is attributable to a credit reduction in excess of 0.6 of wages attributable to such State) be treated as contributions paid into the State unemployment fund with respect to such taxable year.

(5) Benefit cost ratio

For purposes of this subsection—

(A) In general

The benefit cost ratio for any calendar year is the percentage determined by dividing—

(i) the sum of the total of the compensation paid under the State unemployment compensation law during such calendar year and any interest paid during such calendar year on advances made to the State under title XII of the Social Security Act, by

(ii) the total amount of the remuneration subject to contributions under the State unemployment compensation law with respect to such calendar year (determined without regard to any limitation on the amount of remuneration subject to contribution under the State law).

(B) Reimbursable benefits not taken into account

For purposes of subparagraph (A), compensation shall not be taken into account to the extent—

(i) the State is entitled to reimbursement for such compensation under the provisions of any Federal law, or

(ii) such compensation is attributable to services performed for a reimbursing employer.

(C) Reimbursing employer

The term ''reimbursing employer'' means any governmental entity or other organization (or group of governmental entities or any other organizations) which makes reimbursements in lieu of contributions to the State unemployment fund.

(D) Special rules for years before 1985

(i) Taxable year 1983

For purposes of determining whether a State meets the requirements of paragraph (2)(C) for taxable year 1983, only regular compensation (as defined in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970) shall be taken into account for purposes of determining the benefit ratio for any preceding calendar year before 1982.

(ii) Taxable year 1984

For purposes of determining whether a State meets the requirements of paragraph (2)(C) for taxable year 1984, only regular compensation (as so defined) shall be taken into account for purposes of determining the benefit ratio for any preceding calendar year before 1981.

(E) Rounding

If any percentage determined under subparagraph (A) is not a multiple of .1 percent, such percentage shall be reduced to the nearest multiple of .1 percent.

(6) Reports

The Secretary of Labor may, by regulations, require a State to furnish such information at such time and in such manner as may be necessary for purposes of this subsection.

(7) Definitions and special rules

The definitions and special rules set forth in subsection (d) shall apply to this subsection in

the same manner as they apply to subsection (c).

(8) Partial limitation

(A) In the case of a State which would meet the requirements of this subsection for a taxable year prior to 1986 but for its failure to meet one of the requirements contained in subparagraph (C) or (D) of paragraph (2), the reduction under subsection (c)(2) in credits otherwise applicable to taxpayers in such State for such taxable year and each subsequent year (in a period of consecutive years for each of which a credit reduction is in effect for taxpayers in such State) shall be reduced by 0.1 percentage point.

(B) In the case of a State which does not meet the requirements of paragraph (2) but meets the requirements of subparagraphs (A) and (B) of paragraph (2) and which also meets the requirements of section 1202(b)(8)(B) of the Social Security Act with respect to such taxable year, the reduction under subsection (c)(2) in credits otherwise applicable to taxpayers in such State for such taxable year and each subsequent year (in a period of consecutive years for each of which a credit reduction is in effect for taxpayers in such State) shall be further reduced by an additional 0.1 percentage point.

(C) In no case shall the application of subparagraphs (A) and (B) reduce the credit reduction otherwise applicable under subsection (c)(2) below the limitation under paragraph (1).

(g) Credit reduction not to apply when State makes certain repayments

(1) In general

In the case of any State which meets requirements of paragraph (2) with respect to any taxable year, subsection (c)(2) shall not apply to such taxable year; except that such taxable year (and January 1 of such taxable year) shall (except as provided in subsection (f)(3)) be taken into account for purposes of applying subsection (c)(2) to succeeding taxable years.

(2) Requirements

The requirements of this paragraph are met by any State with respect to any taxable year if the Secretary of Labor determines that—

(A) the repayments during the 1-year period ending on November 9 of such taxable year made by such State of advances under title XII of the Social Security Act are not less than the sum of—

(i) the potential additional taxes for such taxable year, and

(ii) any advances made to such State during such 1-year period under such title XII,

(B) there will be sufficient amounts in the State unemployment fund to pay all compensation during the 3-month period beginning on November 1 of such taxable year without receiving any advance under title XII of the Social Security Act, and

(C) there is a net increase in the solvency of the State unemployment compensation system for the taxable year attributable to changes made in the State law after the date on which the first advance taken into account in determining the amount of the potential additional taxes was made (or, if later, after the date of the enactment of this subsection) and such net increase equals or exceeds the potential additional taxes for such taxable year.

(3) Definitions

For purposes of paragraph (2)—

(A) Potential additional taxes

The term ''potential additional taxes'' means, with respect to any State for any taxable year, the aggregate amount of the additional tax which would be payable under this chapter for such taxable year by all taxpayers subject to the unemployment compensation law of such State for such taxable year if paragraph (2) of subsection (c) had applied to such taxable year and any preceding taxable year without regard to this subsection but with regard to subsection (f).

(B) Treatment of certain reductions

Any reduction in the State's balance under section 901(d)(1) of the Social Security Act shall not be treated as a repayment made by such State.

(4) Reports

The Secretary of Labor may require a State to furnish such information at such time and in such manner as may be necessary for purposes of paragraph (2).

(Aug. 16, 1954, ch. 736, 68A Stat. 439; Pub. L. 86–778, title V, § 523(b), Sept. 13, 1960, 74 Stat. 980; Pub. L. 87–6, § 14(b), Mar. 24, 1961, 75 Stat. 16; Pub. L. 87–321, § 1(a), Sept. 26, 1961, 75 Stat. 683; Pub. L. 88–31, § 2(b), May 29, 1963, 77 Stat. 51; Pub. L. 88–173, § 1(a)–(c), Nov. 7, 1963, 77 Stat. 305; Pub. L. 91–373, title I, § 142(a), (b), Aug. 10, 1970, 84 Stat. 707; Pub. L. 93–618, title II, § 239(e), Jan. 3, 1975, 88 Stat. 2025; Pub. L. 94–45, title I, § 110(a), title III, § 302, June 30, 1975, 89 Stat. 239, 243; Pub. L. 94–455, title XIX, §§ 1903(a)(12), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1808, 1834; Pub. L. 95–19, title II, § 201(a), Apr. 12, 1977, 91 Stat. 43; Pub. L. 96–589, § 6(f), Dec. 24, 1980, 94 Stat. 3409; Pub. L. 97–35, title XXIV, § 2406(a), Aug. 13, 1981, 95 Stat. 876; Pub. L. 97–248, title II, §§ 271(c)(2), (3)(A), (B), 272(a), 273(a), Sept. 3, 1982, 96 Stat. 555–557; Pub. L. 98–21, title V, §§ 512(a)(1), (b), 513(a)–(c), Apr. 20, 1983, 97 Stat. 146, 147; Pub. L. 99–514, title XVIII, § 1884(1), (2), Oct. 22, 1986, 100 Stat. 2919.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (c)(2), (f)(2)(D), (5)(A)(i), (8)(B), and (g)(2)(A), (B), (3)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XII of the Social Security Act is classified generally to subchapter XII (§ 1321 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 901(d)(1) and 1202(b)(8)(B) of the Social Security Act are classified to sections 1101(d)(1) and 1322(b)(8)(B), respectively, of Title 42. For complete classification of this act to the Code, see section 1305 of Title 42 and Tables.

Section 239 of the Trade Act of 1974, referred to in subsec. (c)(3)(A), (B), is classified to subsec. (c)(3) of this section and to section 2311 of Title 19, Customs Duties.

The date of the enactment of this subsection, referred to in subsec. (f)(2)(A), (B), means the date of the enactment of Pub. L. 97–35 which was approved Aug. 13, 1981.

Section 205 of the Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsec. (f)(5)(D)(i), is section 205 of Pub. L. 91–373, title II, Aug. 10, 1970, 84 Stat. 708, which is set out as a note under section 3304 of this title.

The date of the enactment of this subsection, referred to in subsec. (g)(2)(C), means the date of the enactment of Pub. L. 97–248, which was approved Sept. 3, 1982.

AMENDMENTS

1986—Subsec. (c)(2)(B). Pub. L. 99–514, §1884(1), substituted ''denominator'' for second reference to ''determination'', and in cl. (i) inserted ''percent'' after ''2.7'' and struck out ''percent'' after ''is to be made''.

Subsec. (f)(8)(A). Pub. L. 99–514, §1884(2), substituted ''1986'' for ''1987''.

1983—Subsec. (c)(2)(B). Pub. L. 98–21, §513(c), inserted '', multiplied by a fraction, the numerator of which is the State's average annual wage in covered employment for the calendar year in which the determination is made and the determination of which is the wage base under this chapter,'' in provisions preceding cl. (i).

Subsec. (c)(2)(B)(i). Pub. L. 98–21, §513(b), inserted ''multiplied by a fraction, the numerator of which is the wage base under this chapter and the denominator of which is the estimated United States average annual wage in covered employment for the calendar year in which the determination is to be made'' after ''2.7''.

Subsec. (d)(4)(B). Pub. L. 98–21, §513(a), amended subpar. (B) generally, adding cl. (i), designating existing provisions as cl. (ii), and inserting reference to purposes of subsec. (c)(2)(C).

Subsec. (f)(1). Pub. L. 98–21, §512(b), struck out ''beginning before January 1, 1988,'' after ''any taxable year''.

Subsec. (f)(8). Pub. L. 98–21, §512(a)(1), added par. (8).

1982—Subsec. (b). Pub. L. 97–248, §271(c)(2)(A), substituted ''5.4 percent'' for ''2.7 percent''.

Subsec. (c)(2). Pub. L. 97–248, §273(a), inserted provision at end that subpar. (C) shall not apply with respect to any taxable year to which it would otherwise apply (but that subpar. (B) would apply to such taxable year) if the Secretary of Labor determines (on or before Nov. 10 of such taxable year) that the State meets the requirements of subsec. (f)(2)(B) of this section for such taxable year.

Subsec. (c)(2)(A). Pub. L. 97–248, §271(c)(3)(A), substituted ''5 percent'' for ''10 percent'' in two places.

Subsec. (c)(3). Pub. L. 97–248, §271(c)(3)(B), substituted ''7½ percent'' for ''15 percent'' in provisions following subpar. (B).

Subsec. (d)(1). Pub. L. 97–248, §271(c)(2)(B), substituted ''6 percent'' for ''3 percent'' in par. heading and text.

Subsec. (g). Pub. L. 97–248, §272(a), added subsec. (g).

1981—Subsec. (f). Pub. L. 97–35 added subsec. (f).

1980—Subsec. (a)(5). Pub. L. 96–589 added par. (5).

1977—Subsec. (c)(2). Pub. L. 95–19 substituted ''January 1, 1980'' for ''January 1, 1978'' wherever appearing.

1976—Subsec. (a)(1). Pub. L. 94–455, §1903(a)(12)(A), struck out ''(10-month period in the case of October 31, 1972)'' after ''ending on October 31 of such year''.

Subsec. (b). Pub. L. 94–455, §1903(a)(12)(B), struck out ''(10-month period in the case of October 31, 1972)'' after ''ending on October 31, of such year'' and substituted ''12-month period'' for ''12 or 10–month period, as the case may be,''.

Subsec. (c)(2). Pub. L. 94–455, §1903(a)(12)(C)(i), (ii), redesignated par. (3) as (2), struck out ''on or after the date of the enactment of the Employment Security Act of 1960'' after ''title XII of the Social Security Act'', and substituted ''paragraph (1)'' for ''paragraphs (1) and (2). Former par. (2), which related to the computation of the reduction of the total credits allowable to a taxpayer with respect to advances made to the unemployment account, was struck out.

Subsec. (c)(3), (4). Pub. L. 94–455, §1903(a)(12)(C)(i), (iii), redesignated par. (4) as (3) and substituted ''paragraphs (1) and (2)'' for ''paragraphs (1), (2), and (3)''. Former par. (3) redesignated (2).

Subsec. (d)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(3). Pub. L. 94–455, §1903(a)(12)(C)(iv), struck out ''or (3)'' after ''Paragraph (2)''.

Subsec. (d)(4) to (6). Pub. L. 94–455, §1903(a)(12(C)(v), substituted ''subsection (c)(2)'' for ''subsection (c)(3)''.

Subsec. (d)(7). Pub. L. 94–455, §1903(a)(12)(C)(vi), substituted ''subsection (c)(2)(B) or (C)'' for ''subsection (c)(3)(B) or (C)''.

Subsec. (d)(8). Pub. L. 94–455, §1903(a)(12)(D), struck out par. (8) which provided for a cross reference to section 104 of the Temporary Unemployment Compensation Act of 1958 relating to the reduction of total credits allowable under subsec. (c) of this section.

1975—Subsec. (c)(3). Pub. L. 94–45, §110(a), provided that par. (3) shall not be applicable with respect to the taxable year beginning Jan. 1, 1975, or any succeeding taxable year which begins before Jan. 1, 1978, and that, for the purposes of par. (3), Jan. 1, 1978, shall be deemed to be the first Jan. 1 occurring after Jan. 1, 1974, and consecutive taxable years in the period commencing Jan. 1, 1978, shall be determined as if the taxable year which begins Jan. 1, 1978, were the taxable year immediately succeeding the taxable year which began on Jan. 1, 1974.

Subsec. (c)(4). Pub. L. 94–45, §302, substituted ''July 15, 1975'' for ''July 1, 1975''.

Pub. L. 93–618 added par. (4).

1970—Subsec. (a)(1). Pub. L. 91–373, §142(a), substituted ''certified as provided in section 3304 for the 12–month period ending on October 31 of such year (10–month period in the case of October 31, 1972)'' for ''certified for the taxable year as provided in section 3304''.

Subsec. (b). Pub. L. 91–373, §142(b), changed the certification date from December 31 to October 31, with a provision for a 10–month period in the case of October 31, 1972, and provided for certification based on a 12-month period ending each October 31.

1963—Subsec. (c). Pub. L. 88–173, in cl. (2), substituted ''on January 1, 1963 (and in the case of any succeeding taxable year beginning before January 1, 1968),'' for ''with the fourth consecutive January 1'', in subpar. (A), and ''on or after January 1, 1968,'' for ''with a consecutive January 1'', in subpar. (B), and inserted paragraph following subpar. (B).

Subsec. (d)(1). Pub. L. 88–31 substituted ''the rate provided by such section'' for ''3.1 percent (or, in the case of the tax imposed with respect to the calendar years 1962 and 1963, in lieu of 3.5 percent)''.

1961—Subsec. (d)(1). Pub. L. 87–6 provided for computation of the tax at the rate of 3 percent in lieu of 3.5 percent for calendar years 1962 and 1968.

Subsec. (e). Pub. L. 87–321 added subsec. (e).

1960—Subsec. (c). Pub. L. 86–778 restricted cl. (2) to advances made before the date of the enactment of the Employment Security Act of 1960, added cl. (3), and struck out provisions which related to the attributing of wages to a particular State, which provisions are now covered by subsec. (d)(2).

Subsec. (d). Pub. L. 86–778 added subsec. (d).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 512(a)(2) of Pub. L. 98–21 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to taxable year 1983 and taxable years thereafter.''

Section 513(d) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section] shall be effective for taxable year 1983 and taxable years thereafter.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 271(c)(2), (3)(A), (B) of Pub. L. 97–248 applicable to remuneration paid after Dec. 31, 1984, see section 271(d)(2) of Pub. L. 97–248, as amended, set out as a note under section 3301 of this title.

Section 272(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1982.''

Section 273(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1982.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2406(b) of Pub. L. 97–35 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1980.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not to apply to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 142(i) of Pub. L. 91–373 provided that: ''The amendments made by this section [amending this section and sections 3303 and 3304 of this title] shall apply with respect to the taxable year 1972 and taxable years thereafter.''

EFFECTIVE DATE OF 1963 AMENDMENT

Section 1(d) of Pub. L. 88–173 provided that: ''The amendments made by subsections (a), (b), and (c) of this section [amending this section] shall apply only with respect to taxable years beginning on or after January 1, 1963.''

EFFECTIVE DATE OF 1961 AMENDMENT

Section 1(b) of Pub. L. 87–321 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to the calendar year 1961 and each calendar year thereafter.''

EXTENSION OF PERIOD FOR REPAYMENT OF FEDERAL LOANS TO STATE UNEMPLOYMENT FUNDS

Pub. L. 102–318, title III, § 304, July 3, 1992, 106 Stat. 298, provided that:

''(a) GENERAL RULE.—If the Secretary of Labor determines that a State meets the requirements of subsection (b), paragraph (2) of section 3302(c) of the Internal Revenue Code of 1986 shall be applied with respect to such State for taxable years after 1991—

''(1) by substituting 'third' for 'second' in subparagraph (A)(i),

''(2) by substituting 'fourth or fifth' for 'third or fourth' in subparagraph (B), and

''(3) by substituting 'sixth' for 'fifth' in subparagraph (C).

''(b) REQUIREMENTS.—A State meets the requirements of this subsection if, during calendar year 1992 or 1993, the State amended its unemployment compensation law to increase estimated contributions required under such law by at least 25 percent.

''(c) SPECIAL RULE.—This section shall not apply to any taxable year after 1994 unless—

''(1) such taxable year is in a series of consecutive taxable years as of the beginning of each of which there was a balance referred to in section 3302(c)(2) of such Code, and

''(2) such series includes a taxable year beginning in 1992, 1993, or 1994.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULE FOR CERTAIN EMPLOYEES AND SMALL BUSINESSES

Section 271(d)(3), (4), formerly 271(b)(3), of Pub. L. 97–248, as redesignated and amended by Pub. L. 98–601, § 1(a), Oct. 30, 1984, 98 Stat. 3147; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(3) TRANSITIONAL RULE FOR CERTAIN EMPLOYEES.—

''(A) IN GENERAL.—Notwithstanding section 3303 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the case of taxable years beginning after December 31, 1984, and before January 1, 1989, a taxpayer shall be allowed the additional credit under section 3302(b) of such Code with respect to any employee covered by a qualified specific industry provision if the requirements of subparagraph (B) are met with respect to such employee.

''(B) REQUIREMENTS.—The requirements of this subparagraph are met for any taxable year with respect to any employee covered by a specific industry provision if the amount of contributions required to be paid for the taxable year to the unemployment fund of the State with respect to such employee are not less than the product of the required rate multiplied by the wages paid by the employer during the taxable year.

''(C) REQUIRED RATE.—For purposes of subparagraph (B), the required rate for any taxable year is the sum of—

''(i) the rate at which contributions were required to be made under the specific industry provision as in effect on August 10, 1982, and

''(ii) the applicable percentage of the excess of 5.4 percent over the rate described in clause (i).

''(D) APPLICABLE PERCENTAGE.—For purposes of subparagraph (C), the term 'applicable percentage' means—

''(i) 20 percent in the case of taxable year 1985,

''(ii) 40 percent in the case of taxable year 1986,

''(iii) 60 percent in the case of taxable year 1987, and

''(iv) 80 percent in the case of taxable year 1988.

''(E) QUALIFIED SPECIFIC INDUSTRY PROVISION.—For purposes of this paragraph, the term, 'qualified specific industry provision' means a provision contained in a State unemployment compensation law (as in effect on August 10, 1982)—

''(i) which applies to employees in a specific industry or to an otherwise defined type of employees, and

''(ii) under which employers may elect to make contributions at a specified rate (without experience rating) which exceeds 2.7 percent.

''(4) TRANSITIONAL RULE FOR CERTAIN SMALL BUSINESSES.—

''(A) IN GENERAL.—Notwithstanding section 3303 of the Internal Revenue Code of 1986, in the case of taxable years beginning after December 31, 1984, and before January 1, 1989, a taxpayer shall be allowed the additional credit under section 3302(b) of such Code with respect to any employee covered by a qualified small business provision if the requirements of subparagraph (B) are met with respect to such employee.

''(B) REQUIREMENTS.—The requirements of this subparagraph are met for any taxable year with respect to any employee covered by a qualified small business provision if the amount of contributions required to be paid for the taxable year to the unemployment fund of the State with respect to such employee are not less than the product of the required rate multiplied by the wages paid by the employer during the taxable year.

''(C) REQUIRED RATE.—For purposes of subparagraph (B), the required rate for any taxable year is the sum of—

''(i) 3.1 percent, plus

''(ii) the applicable percentage (as defined in paragraph (3)(D)) of the excess of 5.4 percent over the rate described in clause (i).

''(D) QUALIFIED SMALL BUSINESS PROVISION.—For purposes of this paragraph, the term 'qualified small

business provision' means a provision contained in a State unemployment compensation law (as in effect on the date of the enactment of this paragraph [Oct. 30, 1984]) which provides a maximum rate at which an employer is subject to contribution for wages paid during a calendar quarter if the total wages paid by such employer during such calendar quarter are less than $50,000.

''(E) DEFINITION.—For purposes of this paragraph, the term 'wages' means the remuneration subject to contributions under the State unemployment compensation law, except that for purposes of subparagraph (D) the amount of total wages paid by an employer shall be determined without regard to any limitation on the amount subject to contribution.''

[Section 1(b) of Pub. L. 98–601 provided that: ''The amendment made by subsection (a) [amending section 271(d) of Pub. L. 97–248, set out above] shall apply to remuneration paid after December 31, 1984.'']

FINDINGS OF SECRETARY OF LABOR CONCERNING STEPS TAKEN BY STATES AS PREREQUISITE TO SUSPENSION UNTIL JANUARY 1, 1980, OF AUTOMATIC INCREASES IN FEDERAL UNEMPLOYMENT TAX

Section 201(b) of Pub. L. 95–19 provided that extension under section 201(a) of Pub. L. 95–19 (amending this section) from Jan. 1, 1978, to Jan. 1, 1980, not to apply to any State unless the Secretary of Labor finds that such State meets the requirement of section 110(b) of Emergency Compensation and Special Unemployment Assistance Extension Act of 1975.

FISCAL SOUNDNESS OF STATE UNEMPLOYMENT ACCOUNT IN UNEMPLOYMENT TRUST FUND; UNPAID LOANS TO STATES; FINDINGS OF SECRETARY OF LABOR CONCERNING STEPS TAKEN BY STATES AS PREREQUISITE TO 1975–1977 SUSPENSION OF AUTOMATIC INCREASES IN FEDERAL UNEMPLOYMENT TAX

Section 110(b) of Pub. L. 94–45 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall not be applicable in the case of any State unless the Secretary of Labor finds that such State has studied and taken appropriate action with respect to the financing of its unemployment programs so as substantially to accomplish the purpose of restoring the fiscal soundness of the State's unemployment account in the Unemployment Trust Fund and permitting the repayment within a reasonable time of any advances made to such account under title XII of the Social Security Act [section 1321 et seq. of Title 42, The Public Health and Welfare]. For purposes of the preceding sentence, appropriate action with respect to the financing of a State's unemployment programs means an increase in the State's unemployment tax rate, an increase in the State's unemployment tax base, a change in the experience rating formulas, or a combination thereof.

''(2) The Secretary of Labor shall promptly prescribe and publish in the Federal Register regulations setting forth the criteria according to which he will determine the requirements of the preceding paragraph.

''(3) Immediately after he makes a determination with respect to any State under paragraph (1), the Secretary of Labor shall publish such determination, together with his reasons therefor, in the Federal Register.''

§ 3303. Conditions of additional credit allowance

(a) State standards

A taxpayer shall be allowed an additional credit under section 3302(b) with respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor finds that under such law—

(1) no reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date;

(2) no reduced rate of contributions to a guaranteed employment account is permitted to a person (or a group of persons) having individuals in his (or their) employ unless—

(A) the guaranty of remuneration was fulfilled in the year preceding the computation date; and

(B) the balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3 years preceding the computation date by which contributions to such account were measured; and

(C) such contributions were payable to such account with respect to 3 years preceding the computation date;

(3) no reduced rate of contributions to a reserve account is permitted to a person (or group of persons) having individuals in his (or their) employ unless—

(A) compensation has been payable from such account throughout the year preceding the computation date, and

(B) the balance of such account amounts to not less than five times the largest amount of compensation paid from such account within any 1 of the 3 years preceding such date, and

(C) the balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3 years preceding such date by which contributions to such account were measured, and

(D) such contributions were payable to such account with respect to the 3 years preceding the computation date.

For any person (or group of persons) who has (or have) not been subject to the State law for a period of time sufficient to compute the reduced rates permitted by paragraphs (1), (2), and (3) of this subsection on a 3–year basis (i) the period of time required may be reduced to the amount of time the person (or group of persons) has (or have) had experience under or has (or have) been subject to the State law, whichever is appropriate, but in no case less than 1 year immediately preceding the computation date, or (ii) a reduced rate (not less than 1 percent) may be permitted by the State law on a reasonable basis other than as permitted by paragraph (1), (2), or (3).

(b) Certification by the Secretary of Labor with respect to additional credit allowance

(1) On October 31 of each calendar year, the Secretary of Labor shall certify to the Secretary of the Treasury the law of each State (certified by the Secretary of Labor as provided in section 3304 for the 12-month period ending on such October 31), with respect to which he finds that reduced rates of contributions were allowable with respect to such 12-month period only in accordance with the provisions of subsection (a).

(2) If the Secretary of Labor finds that under the law of a single State (certified by the Secretary of Labor as provided in section 3304) more than one type of fund or account is maintained, and reduced rates of contributions to more than one type of fund or account were allowable with respect to any 12-month period ending on October 31, and one or more of such reduced rates were allowable under conditions not fulfilling the requirements of subsection (a), the Secretary of Labor shall, on such October 31, certify to the Secretary of the Treasury only those provisions of the State law pursuant to which reduced rates of contributions were allowable with respect to such 12-month period under conditions fulfilling the requirements of subsection (a), and shall, in connection therewith, designate the kind of fund or account, as defined in subsection (c), established by the provisions so certified. If the Secretary of Labor finds that a part of any reduced rate of contributions payable under such law or under such provisions is required to be paid into one fund or account and a part into another fund or account, the Secretary of Labor shall make such certification pursuant to this paragraph as he finds will assure the allowance of additional credits only with respect to that part of the reduced rate of contributions which is allowed under provisions which do fulfill the requirements of subsection (a).

(3) The Secretary of Labor shall, within 30 days after any State law is submitted to him for such purpose, certify to the State agency his findings with respect to reduced rates of contributions to a type of fund or account, as defined in subsection (c), which are allowable under such State law only in accordance with the provisions of subsection (a). After making such findings, the Secretary of Labor shall not withhold his certification to the Secretary of the Treasury of such State law, or of the provisions thereof with respect to which such findings were made, for any 12-month period ending on October 31 pursuant to paragraph (1) or (2) unless, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds the State law no longer contains the provisions specified in subsection (a) or the State has, with respect to such 12-month period, failed to comply substantially with any such provision.

(c) Definitions

As used in this section—

(1) Reserve account

The term ''reserve account'' means a separate account in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ, from which account, unless such account is exhausted, is paid all and only compensation payable on the basis of services performed for such person (or for one or more of the persons comprising the group).

(2) Pooled fund

The term ''pooled fund'' means an unemployment fund or any part thereof (other than a reserve account or a guaranteed employment account) into which the total contributions of persons contributing thereto are payable, in which all contributions are mingled and undivided, and from which compensation is payable to all individuals eligible for compensation from such fund.

(3) Partially pooled account

The term ''partially pooled account'' means a part of an unemployment fund in which part of the fund all contributions thereto are mingled and undivided, and from which part of the fund compensation is payable only to individuals to whom compensation would be payable from a reserve account or from a guaranteed employment account but for the exhaustion or termination of such reserve account or of such guaranteed employment account. Payments from a reserve account or guaranteed employment account into a partially pooled account shall not be construed to be inconsistent with the provisions of paragraph (1) or (4).

(4) Guaranteed employment account

The term ''guaranteed employment account'' means a separate account, in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ who, in accordance with the provisions of the State law or of a plan thereunder approved by the State agency,

(A) guarantees in advance at least 30 hours of work, for which remuneration will be paid at not less than stated rates, for each of 40 weeks (or if more, 1 weekly hour may be deducted for each added week guaranteed) in a year, to all the individuals who are in his (or their) employ in, and who continue to be available for suitable work in, one or more distinct establishments, except that any such individual's guaranty may commence after a probationary period (included within the 11 or less consecutive weeks immediately following the first week in which the individual renders services), and

(B) gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties, from which account, unless such account is exhausted or terminated, is paid all and only compensation, payable on the basis of services performed for such person (or for one or more of the persons comprising the group), to any such individual whose guaranteed remuneration has not been paid (either pursuant to the guaranty or from the security or assurance provided for the fulfillment of the guaranty), or whose guaranty is not renewed and who is otherwise eligible for compensation under the State law.

(5) Year

The term ''year'' means any 12 consecutive calendar months.

(6) Balance

The term ''balance'', with respect to a reserve account or a guaranteed employment account, means the amount standing to the credit of the account as of the computation date; except that, if subsequent to January 1, 1940, any moneys have been paid into or credited to such account other than payments thereto by

persons having individuals in their employ, such term shall mean the amount in such account as of the computation date less the total of such other moneys paid into or credited to such account subsequent to January 1, 1940.

(7) Computation date

The term ''computation date'' means the date, occurring at least once in each calendar year and within 27 weeks prior to the effective date of new rates of contributions, as of which such rates are computed.

(8) Reduced rate

The term ''reduced rate'' means a rate of contributions lower than the standard rate applicable under the State law, and the term ''standard rate'' means the rate on the basis of which variations therefrom are computed.

(d) Voluntary contributions

A State law may, without being deemed to violate the standards set forth in subsection (a), permit voluntary contributions to be used in the computation of reduced rates if such contributions are paid prior to the expiration of 120 days after the beginning of the year for which such rates are effective.

(e) Payments by certain nonprofit organizations

A State may, without being deemed to violate the standards set forth in subsection (a), permit an organization (or a group of organizations) described in section 501(c)(3) which is exempt from income tax under section 501(a) to elect (in lieu of paying contributions) to pay into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to service performed in the employ of such organization (or group).

(f) Transition

To facilitate the orderly transition to coverage of service to which section 3309(a)(1)(A) applies, a State law may provide that an organization (or group of organizations) which elects before April 1, 1972, to make payments (in lieu of contributions) into the State unemployment fund as provided in section 3309(a)(2), and which had paid contributions into such fund under the State law with respect to such service performed in its employ before January 1, 1969, is not required to make any such payment (in lieu of contributions) on account of compensation paid after its election as heretofore described which is attributable under the State law to service performed in its employ, until the total of such compensation equals the amount—

(1) by which the contributions paid by such organization (or group) with respect to a period before the election provided by section 3309(a)(2), exceed

(2) the unemployment compensation for the same period which was charged to the experience-rating account of such organization (or group) or paid under the State law on the basis of wages paid by it or service performed in its employ, whichever is appropriate.

(g) Transitional rule for Unemployment Compensation Amendments of 1976

To facilitate the orderly transition to coverage of service to which section 3309(a)(1)(A) applies by reason of the enactment of the Unemployment Compensation Amendments of 1976, a State law may provide that an organization (or group of organizations) which elects, when such election first becomes available under the State law with respect to such service, to make payments (in lieu of contributions) into the State unemployment fund as provided in section 3309(a)(2), and which had paid contributions into such fund under the State law with respect to such service performed in its employ before the date of the enactment of this subsection, is not required to make any such payment (in lieu of contributions) on account of compensation paid after its election as heretofore described which is attributable under the State law to such service performed in its employ, until the total of such compensation equals the amount—

(1) by which the contributions paid by such organization (or group) on the basis of wages for such service with respect to a period before the election provided by section 3309(a)(2), exceed

(2) the unemployment compensation for the same period which was charged to the experience-rating account of such organization (or group) or paid under the State law on the basis of such service performed in its employ or wages paid for such service, whichever is appropriate.

(Aug. 16, 1954, ch. 736, 68A Stat. 440; Sept. 1, 1954, ch. 1212, § 2, 68 Stat. 1130; Pub. L. 91–373, title I, §§ 104(c), 122(a), 142(c)–(e), Aug. 10, 1970, 84 Stat. 699, 702, 707; Pub. L. 94–455, title XIX, §§ 1903(a)(13), 1906(b)(13)(C), Oct. 4, 1976, 90 Stat. 1809, 1834; Pub. L. 94–566, title I, § 122(a), (b), Oct. 20, 1976, 90 Stat. 2675, 2676.)

REFERENCES IN TEXT

The Unemployment Compensation Amendments of 1976, referred to in subsec. (g), is Pub. L. 94–566, Oct. 20, 1976, 90 Stat. 2667, as amended. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 3311 of this title and Tables.

The date of enactment of this subsection, referred to in subsec. (g), is the date of enactment of Pub. L. 94–566, which was approved Oct. 20, 1976.

AMENDMENTS

1976—Subsec. (b)(1) to (3). Pub. L. 94–455 substituted reference to Secretary of the Treasury for reference to Secretary and reference to 12–month period for reference to 12 or 10-month period, as the case may be, and struck out reference to (10-month period in the case of Oct. 31, 1972) following provisions relating to 12–month period ending Oct. 31.

Subsec. (f). Pub. L. 94–566, § 122(b), substituted ''which elects before April 1, 1972,'' for ''which elects, when such election first becomes available under the State law,''.

Subsec. (g). Pub. L. 94–566, § 122(a), added subsec. (g).

1970—Subsec. (a). Pub. L. 91–373, § 122(a), added to provision following par. (3) the authorization for the allowance of a reduced rate by State law (but not less than 1 percent) on a reasonable basis other than as permitted by par. (1), (2), or (3).

Subsec. (b). Pub. L. 91–373, § 142(c)–(e), changed the certification date referred to in pars. (1) to (3) from Dec. 31 to Oct. 31, with provision for a 10-month period in the case of Oct. 31, 1972, and, except for Oct. 31, 1972, provided for a 12-month period ending on Oct. 31 each year.

Subsecs. (e), (f). Pub. L. 91–373, § 104(c), added subsecs. (e) and (f).

1954—Subsec. (a). Act Sept. 1, 1954, inserted sentence relating to reduced rates for new employers.

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 122(c) of Pub. L. 94–566 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 20, 1976]. The amendment made by subsection (b) [amending this section] shall take effect on January 1, 1970.''

Amendment by section 1903(a)(13) of Pub. L. 94–455 applicable with respect to wages paid after Dec. 31, 1976, see section 1903(d) of Pub. L. 94–455, set out as a note under section 3101 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by section 104(c) of Pub. L. 91–373 [amending this section] to take effect Jan. 1, 1970, see section 104(d)(1) of Pub. L. 91–373, set out as a note under section 3304 of this title.

Section 122(b) of Pub. L. 91–373 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1971.''

Amendment by section 142(c)–(e) of Pub. L. 91–373 applicable with respect to taxable year 1972 and taxable years thereafter, see section 142(i) of Pub. L. 91–373, set out as a note under section 3302 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 2 of act Sept. 1, 1954, provided that the amendment made by that section is effective after Dec. 31, 1954.

TREATMENT OF CERTAIN CHARITABLE ORGANIZATIONS RETROACTIVELY DETERMINED TO BE DESCRIBED IN SECTION 501(c)(3) OF THIS TITLE

Pub. L. 98–21, title V, § 524, Apr. 20, 1983, 97 Stat. 149, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If—

''(1) an organization did not make an election to make payments (in lieu of contributions) as provided in section 3309(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] before April 1, 1972, because such organization, as of such date, was treated as an organization described in section 501(c)(4) of such Code,

''(2) the Internal Revenue Service subsequently determined that such organization was described in section 501(c)(3) of such Code, and

''(3) such organization made such an election before the earlier of—

''(A) the date 18 months after such election was first available to it under the State law, or

''(B) January 1, 1984,

then section 3303(f) of such Code shall be applied with respect to such organization as if it did not contain the requirement that the election be made before April 1, 1972, and by substituting 'January 1, 1982' for 'January 1, 1969'.''

§ 3304. Approval of State laws

(a) Requirements

The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that—

(1) all compensation is to be paid through public employment offices or such other agencies as the Secretary of Labor may approve;

(2) no compensation shall be payable with respect to any day of unemployment occurring within 2 years after the first day of the first period with respect to which contributions are required;

(3) all money received in the unemployment fund shall (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305(b)) immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904 of the Social Security Act (42 U.S.C. 1104);

(4) all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b); except that—

(A) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration;

(B) the amounts specified by section 903(c)(2) or 903(d)(4) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices;

(C) nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance, or the withholding of Federal, State, or local individual income tax, if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor;

(D) amounts may be deducted from unemployment benefits and used to repay overpayments as provided in section 303(g) of the Social Security Act;

(E) amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor;

(F) amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t)); and

(G) with respect to amounts of covered unemployment compensation debt (as defined in section 6402(f)(4)) collected under section 6402(f)—

(i) amounts may be deducted to pay any fees authorized under such section; and

(ii) the penalties and interest described in section 6402(f)(4)(B)[1] may be transferred to the appropriate State fund into which the State would have deposited such amounts had the person owing the debt paid such amounts directly to the State;

(5) compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(B) if the wages, hours, or other conditions of the work offered are substantially less fa-

[1] See References in Text note below.

vorable to the individual than those prevailing for similar work in the locality;

(C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6)(A) compensation is payable on the basis of service to which section 3309(a)(1) applies, in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to such law; except that—

(i) with respect to services in an instructional, research, or principal administrative capacity for an educational institution to which section 3309(a)(1) applies, compensation shall not be payable based on such services for any week commencing during the period between two successive academic years or terms (or, when an agreement provides instead for a similar period between two regular but not successive terms, during such period) to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms,

(ii) with respect to services in any other capacity for an educational institution to which section 3309(a)(1) applies—

(I) compensation payable on the basis of such services may be denied to any individual for any week which commences during a period between 2 successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that

(II) if compensation is denied to any individual for any week under subclause (I) and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of subclause (I),

(iii) with respect to any services described in clause (i) or (ii), compensation payable on the basis of such services shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess,

(iv) with respect to any services described in clause (i) or (ii), compensation payable on the basis of services in any such capacity shall be denied as specified in clauses (i), (ii), and (iii) to any individual who performed such services in an educational institution while in the employ of an educational service agency, and for this purpose the term ''educational service agency'' means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions,

(v) with respect to services to which section 3309(a)(1) applies, if such services are provided to or on behalf of an educational institution, compensation may be denied under the same circumstances as described in clauses (i) through (iv), and

(vi) with respect to services described in clause (ii), clauses (iii) and (iv) shall be applied by substituting ''may be denied'' for ''shall be denied'', and

(B) payments (in lieu of contributions) with respect to service to which section 3309(a)(1) applies may be made into the State unemployment fund on the basis set forth in section 3309(a)(2);

(7) an individual who has received compensation during his benefit year is required to have had work since the beginning of such year in order to qualify for compensation in his next benefit year;

(8) compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work);

(9)(A) compensation shall not be denied or reduced to an individual solely because he files a claim in another State (or a contiguous country with which the United States has an agreement with respect to unemployment compensation) or because he resides in another State (or such a contiguous country) at the time he files a claim for unemployment compensation;

(B) the State shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under the State law with his wages and employment covered under the unemployment compensation law of other States which are approved by the Secretary of Labor in consultation with the State unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations. Any such arrangement shall include provisions for (i) applying the base period of a single State law to a claim involving the combining of an individual's wages and employment covered under two or more State laws, and (ii) avoiding duplicate use of wages and employment by reason of such combining;

(10) compensation shall not be denied to any individual by reason of cancellation of wage credits or total reduction of his benefit rights for any cause other than discharge for misconduct connected with his work, fraud in connection with a claim for compensation, or receipt of disqualifying income;

(11) extended compensation shall be payable as provided by the Federal-State Extended Unemployment Compensation Act of 1970;

(12) no person shall be denied compensation under such State law solely on the basis of pregnancy or termination of pregnancy;

(13) compensation shall not be payable to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods);

(14)(A) compensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act),

(B) any data or information required of individuals applying for compensation to determine whether compensation is not payable to them because of their alien status shall be uniformly required from all applicants for compensation, and

(C) in the case of an individual whose application for compensation would otherwise be approved, no determination by the State agency that compensation to such individual is not payable because of his alien status shall be made except upon a preponderance of the evidence;

(15)(A) subject to subparagraph (B), the amount of compensation payable to an individual for any week which begins after March 31, 1980, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week except that—

(i) the requirements of this paragraph shall apply to any pension, retirement or retired pay, annuity, or other similar periodic payment only if—

(I) such pension, retirement or retired pay, annuity, or similar payment is under a plan maintained (or contributed to) by a base period employer or chargeable employer (as determined under applicable law), and

(II) in the case of such a payment not made under the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law), services performed for such employer by the individual after the beginning of the base period (or remuneration for such services) affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar payment, and

(ii) the State law may provide for limitations on the amount of any such a reduction to take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment, and

(B) the amount of compensation shall not be reduced on account of any payments of governmental or other pensions, retirement or retired pay, annuity, or other similar payments which are not includible in the gross income of the individual for the taxable year in which it was paid because it was part of a rollover distribution;

(16)(A) wage information contained in the records of the agency administering the State law which is necessary (as determined by the Secretary of Health and Human Services in regulations) for purposes of determining an individual's eligibility for assistance, or the amount of such assistance, under a State program funded under part A of title IV of the Social Security Act, shall be made available to a State or political subdivision thereof when such information is specifically requested by such State or political subdivision for such purposes,

(B) wage and unemployment compensation information contained in the records of such agency shall be furnished to the Secretary of Health and Human Services (in accordance with regulations promulgated by such Secretary) as necessary for the purposes of the National Directory of New Hires established under section 453(i) of the Social Security Act, and

(C) such safeguards are established as are necessary (as determined by the Secretary of Health and Human Services in regulations) to insure that information furnished under subparagraph (A) or (B) is used only for the purposes authorized under such subparagraph;

(17) any interest required to be paid on advances under title XII of the Social Security Act shall be paid in a timely manner and shall not be paid, directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) by such State from amounts in such State's unemployment fund;

(18) Federal individual income tax from unemployment compensation is to be deducted and withheld if an individual receiving such compensation voluntarily requests such deduction and withholding; and

(19) all the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

(b) Notification

The Secretary of Labor shall, upon approving such law, notify the governor of the State of his approval.

(c) Certification

On October 31 of each taxable year the Secretary of Labor shall certify to the Secretary of the Treasury each State whose law he has previously approved, except that he shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has amended its law so that it no longer contains the provisions specified in subsection (a) or has with respect to the 12-month period ending on such October 31 failed to comply substantially with any such provision in such subsection. No finding of a failure to comply substantially with any provision in paragraph (5) of subsection (a) shall be based on an application or interpretation of State law (1) until all administrative review provided for under the laws of the State has been exhausted, or (2) with respect to which the time for judicial review provided by the laws of the State has not expired, or (3) with respect to which any judicial review is pending. On October 31 of any taxable year, the Secretary of Labor shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by law to be included therein (including provisions relating to the Federal-State Extended Unemployment Compensation Act of 1970 (or any amendments thereto) as required under subsection (a)(11)), or has, with respect to the twelve-month period ending on such October 31, failed to comply substantially with any such provision.

(d) Notice of noncertification

If at any time the Secretary of Labor has reason to believe that a State whose law he has previously approved may not be certified under subsection (c), he shall promptly so notify the governor of such State.

(e) Change of law during 12-month period

Whenever—

(1) any provision of this section, section 3302, or section 3303 refers to a 12-month period ending on October 31 of a year, and

(2) the law applicable to one portion of such period differs from the law applicable to another portion of such period,

then such provision shall be applied by taking into account for each such portion the law applicable to such portion.

(f) Definition of institution of higher education

For purposes of subsection (a)(6), the term ''institution of higher education'' means an educational institution in any State which—

(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized within such State to provide a program of education beyond high school;

(3) provides an educational program for it which awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

(Aug. 16, 1954, ch. 736, 68A Stat. 443; Pub. L. 91–373, title I, §§104(a), 108(a), 121(a), 131(b)(2), 142(f)–(h), title II, §206, Aug. 10, 1970, 84 Stat. 697, 701, 704, 707, 708, 712; Pub. L. 94–455, title XIX, §§1903(a)(14), 1906(b)(13)(C), (E), Oct. 4, 1976, 90 Stat. 1809, 1834; Pub. L. 94–566, title I, §115(c)(1), (5), title III, §§312(a), (b), 314(a), title V, §506(b), Oct. 20, 1976, 90 Stat. 2670, 2671, 2679, 2680, 2687; Pub. L. 95–19, title III, §302(a), (c), (e), Apr. 12, 1977, 91 Stat. 44, 45; Pub. L. 95–171, §2(a), Nov. 12, 1977, 91 Stat. 1353; Pub. L. 95–216, title IV, §403(b), Dec. 20, 1977, 91 Stat. 1561; Pub. L. 96–364, title IV, §414(a), Sept. 26, 1980, 94 Stat. 1310; Pub. L. 97–35, title XXIV, §2408(a), Aug. 13, 1981, 95 Stat. 880; Pub. L. 97–248, title I, §193(a), Sept. 3, 1982, 96 Stat. 408; Pub. L. 98–21, title V, §§515(b), 521(a), 523(a), Apr. 20, 1983, 97 Stat. 147, 148; Pub. L. 99–272, title XII, §12401(b)(1), Apr. 7, 1986, 100 Stat. 297; Pub. L. 99–514, title XVIII, §1899A(43), Oct. 22, 1986, 100 Stat. 2960; Pub. L. 101–649, title I, §162(e)(4), Nov. 29, 1990, 104 Stat. 5011; Pub. L. 102–164, title III, §302(a), Nov. 15, 1991, 105 Stat. 1059; Pub. L. 102–318, title IV, §401(a)(1), July 3, 1992, 106 Stat. 298; Pub. L. 103–182, title V, §507(b)(1), Dec. 8, 1993, 107 Stat. 2154; Pub. L. 103–465, title VII, §702(b), (c)(1), Dec. 8, 1994, 108 Stat. 4997; Pub. L. 104–193, title I, §110(*l*)(1), formerly §110(*l*)(2), title III, §316(g)(2), Aug. 22, 1996, 110 Stat. 2173, 2218, renumbered Pub. L. 105–33, title V, §5514(a)(2), Aug. 5, 1997, 111 Stat. 620; Pub. L. 107–147, title II, §209(d)(1), Mar. 9, 2002, 116 Stat. 33; Pub. L. 109–280, title XI, §1105(a), Aug. 17, 2006, 120 Stat. 1060; Pub. L. 110–328, §3(c), Sept. 30, 2008, 122 Stat. 3572; Pub. L. 110–458, title I, §111(b), Dec. 23, 2008, 122 Stat. 5113.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(4)(B), (D), (15)(A)(i)(II), (16)(A), (B), (17), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Part A of title IV and title XII of the Act are classified generally to part A (§601 et seq.) of subchapter IV and subchapter XII (§1321 et seq.), respectively, of chapter 7 of Title 42. Sections 303(g), 453(i), and 903(c)(2), (d)(4) of the Act are classified to sections 503(g), 653(i), and 1103(c)(2), (d)(4), respectively, of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1305 of Title 42 and Tables.

Section 6402(f)(4)(B), referred to in subsec. (a)(4)(G)(ii), does not relate to penalties and interest. Provisions relating to penalties and interest are found elsewhere in section 6402(f).

The Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsecs. (a)(11) and (c), is Pub. L. 91–373, title II, Aug. 10, 1970, 84 Stat. 708, as amended, which is set out as a note below.

Section 212(d)(5) of the Immigration and Nationality Act, referred to in subsec. (a)(14)(A), is classified to section 1182(d)(5) of Title 8, Aliens and Nationality.

The Railroad Retirement Act of 1974, referred to in subsec. (a)(15)(A)(i)(II), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set

out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–458, § 111(b)(2), struck out concluding provisions which read as follows: ''Compensation shall not be reduced under paragraph (15) for any pension, retirement or retired pay, annuity, or similar payment which is not includible in gross income of the individual for the taxable year in which paid because it was part of a rollover distribution.''

Subsec. (a)(4)(G). Pub. L. 110–328 added subpar. (G).

Subsec. (a)(15). Pub. L. 110–458, § 111(b)(1), inserted ''(A) subject to subparagraph (B),'' after par. designation, redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i), substituted '', and'' for semicolon at end of cl. (ii), and added subpar. (B).

2006—Subsec. (a). Pub. L. 109–280 added concluding provisions.

2002—Subsec. (a)(4)(B). Pub. L. 107–147 inserted ''or 903(d)(4)'' before ''of the Social Security Act''.

1996—Subsec. (a)(16)(A). Pub. L. 104–193, § 316(g)(2)(C), struck out ''and'' at end.

Pub. L. 104–193, § 316(g)(2)(A), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Pub. L. 104–193, § 110(*l*)(1), formerly § 110(*l*)(2), as renumbered by Pub. L. 105–33, substituted ''eligibility for assistance, or the amount of such assistance, under a State program funded'' for ''eligibility for aid or services, or the amount of such aid or services, under a State plan for aid and services to needy families with children approved''.

Subsec. (a)(16)(B). Pub. L. 104–193, § 316(g)(2)(E), added subpar. (B). Former subpar. (B) redesignated (C).

Pub. L. 104–193, § 316(g)(2)(B), substituted ''information furnished under subparagraph (A) or (B) is used only for the purposes authorized under such subparagraph;'' for ''such information is used only for the purposes authorized under subparagraph (A);''.

Pub. L. 104–193, § 316(g)(2)(A), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (a)(16)(C). Pub. L. 104–193, § 316(g)(2)(D), redesignated subpar. (B) as (C).

1994—Subsec. (a)(4)(C). Pub. L. 103–465, § 702(c)(1), inserted '', or the withholding of Federal, State, or local individual income tax,'' after ''health insurance''.

Subsec. (a)(17) to (19). Pub. L. 103–465, § 702(b), struck out ''and'' at end of par. (17), added par. (18), and redesignated former par. (18) as (19).

1993—Subsec. (a)(4)(F). Pub. L. 103–182 added subpar. (F).

1992—Subsec. (a)(4)(E). Pub. L. 102–318 added subpar. (E).

1991—Subsec. (a)(6)(A)(ii)(I). Pub. L. 102–164, § 302(a)(1), substituted ''may be denied'' for ''shall be denied''.

Subsec. (a)(6)(A)(iii), (iv). Pub. L. 102–164, § 302(a)(2), which directed that ''and'' be struck out at end of cls. (iii) and (iv), could be executed only to cl. (iv) because ''and'' did not appear at end of cl. (iii).

Subsec. (a)(6)(A)(vi). Pub. L. 102–164, § 302(a)(2), added cl. (vi).

1990—Subsec. (a)(14)(A). Pub. L. 101–649 struck out reference to section 203(a)(7) of Immigration and Nationality Act.

1986—Subsec. (a)(4)(D). Pub. L. 99–272 added subpar. (D).

Subsec. (a)(6)(A)(iii). Pub. L. 99–514 struck out ''and'' at end.

1983—Subsec. (a)(4)(C). Pub. L. 98–21, § 523(a), added subpar. (C).

Subsec. (a)(6)(A)(ii)(I), (iii), (iv). Pub. L. 98–21, § 521(a)(2), substituted ''shall be denied'' for ''may be denied''.

Subsec. (a)(6)(A)(v). Pub. L. 98–21, § 521(a)(1), added cl. (v).

Subsec. (a)(17), (18). Pub. L. 98–21, § 515(b), added par. (17) and redesignated former par. (17) as (18).

1982—Subsec. (a)(6)(A)(ii). Pub. L. 97–248 redesignated existing provisions as provisions preceding subcl. (I) and subcl. (I), and in such provisions as so redesignated, struck out ''(other than an institution of higher education)'' after ''capacity for an educational institution'', substituted ''2'' for ''two'', and inserted ''except that'' at end of subcl. (I), and added subcl. (II).

1981—Subsec. (c). Pub. L. 97–35 substituted provisions relating to limitations on certification on Oct. 31 of any taxable year, for provisions relating to limitations on certification on Oct. 31 of any taxable year after 1971, and on Oct. 31 of any taxable year after 1977.

1980—Subsec. (a)(15). Pub. L. 96–364 inserted provisions relating to applicability to any pension, retirement or retired pay, annuity, or other similar periodic payment.

1977—Subsec. (a)(6)(A)(i). Pub. L. 95–19, § 302(c)(1), (2), inserted a comma between ''instructional'' and ''research'', substituted ''two successive academic years or terms'' for ''two successive academic years'', and struck out ''and'' after ''the second of such academic years or terms,''.

Subsec. (a)(6)(A)(iii). Pub. L. 95–19, § 302(c)(3), added cl. (iii).

Subsec. (a)(6)(A)(iv). Pub. L. 95–171 added cl. (iv).

Subsec. (a)(14)(A). Pub. L. 95–19, § 302(a), substituted ''who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was'' for ''who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law (including an alien who is''.

Subsec. (a)(15). Pub. L. 95–19, § 302(e), substituted ''March 31, 1980'' for ''September 30, 1979''.

Subsec. (a)(16), (17). Pub. L. 95–216 added par. (16). Former par. (16) redesignated (17).

1976—Subsec. (a)(3). Pub. L. 94–455, §§ 1903(a)(14)(A), 1906(b)(13)(C), inserted ''of the Treasury'' after ''to the Secretary'' and struck out ''49 Stat. 640; 52 Stat. 1104, 1105;'' before ''42 U.S.C. 1104''.

Subsec. (a)(6)(A). Pub. L. 94–566, § 115(c)(1), designated existing provisions as cl. (i), added cl. (ii), and in cl. (i) as so designated substituted ''educational institution'' for ''institution of higher education'', ''an agreement provides'' for ''the contract provides'', and ''if such individual performs such services in the first of such academic years (or terms) and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms, and'' for ''who has a contract to perform services in any such capacity for any institution or institutions of higher education for both of such academic years or both of such terms, and''.

Subsec. (a)(6)(B). Pub. L. 94–566, § 506(b), substituted ''section 3309(a)(1)'' for ''section 3309(a)(1)(A)''.

Subsec. (a)(12). Pub. L. 94–566, § 312(a), substituted provisions that no person shall be denied compensation under such State law solely on the basis of pregnancy or termination of pregnancy for provisions that each political subdivision of the State should have the right to elect to have compensation payable to employees thereof (whose services were not otherwise subject to such law) based on service performed by such employees in the hospitals and institutions of higher education (as defined in section 3309(d)) operated by such political subdivision; and, if any such political subdivision did elect to have compensation payable to such employees thereof (A) the political subdivision elected should pay into the State unemployment fund, with respect to the service of such employees, payments (in lieu of contributions), and (B) such employees would be entitled to receive, on the basis of such service, compensation payable on the same conditions as compensation which was payable on the basis of similar service for the State which was subject to such law.

Subsec. (a)(13) to (16). Pub. L. 94–566, § 314(a), added pars. (13) to (15) and redesignated former par. (13) as (16).

Subsec. (c). Pub. L. 94–566, § 312(b), provided that on Oct. 31 of any taxable year after 1977, the Secretary shall not certify any State which, after reasonable notice and opportunity for a hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by reason of the enactment of the Unemployment Compensation Amendments of 1976 to be included therein, or has with respect to the 12-month period ending on such Oct. 31, failed to comply substantially with any such provision.

Pub. L. 94–455, §§ 1903(a)(14)(B), 1906(b)(13)(C), (E), inserted ''of the Treasury'' after ''certify to the Secretary'', substituted ''the Secretary of Labor shall'' for ''the Secretary shall'' and struck out ''(10-month period in the case of October 31, 1972)'' after ''to the 12-month period''.

Subsec. (f). Pub. L. 94–566, § 115(c)(5), added subsec. (f).

1970—Subsec. (a)(6) to (13). Pub. L. 91–373, §§ 104(a), 108(a), 121(a), 206, added pars. (6) to (12) and redesignated former par. (6) as (13).

Subsec. (c). Pub. L. 91–373, § 131(b)(2), clarified provisions governing procedure to be followed with respect to a finding of the Secretary of Labor that a state has failed to comply substantially with any of the provisions of subsec. (a)(5).

Pub. L. 91–373, § 142(f), substituted ''October 31'' for ''December 31'' as certification date and ''12-month period ending on such October 31'' for ''taxable year'' and prohibited certifications for failure to amend State laws to contain provisions required by reason of enactment of the Employment Security Amendments of 1970.

Subsec. (d). Pub. L. 91–373, § 142(g), substituted ''If at any time'' for ''If, at any time during the taxable year,''.

Subsec. (e). Pub. L. 91–373, § 142(h), added subsec. (e).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Pub. L. 110–328, § 3(e), Sept. 30, 2008, 122 Stat. 3573, provided that: ''The amendments made by this section [amending this section and sections 6103 and 6402 of this title] shall apply to refunds payable under section 6402 of the Internal Revenue Code of 1986 on or after the date of enactment of this Act [Sept. 30, 2008].''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XI, § 1105(b), Aug. 17, 2006, 120 Stat. 1060, provided that: ''The amendment made by this section [amending this section] shall apply to weeks beginning on or after the date of the enactment of this Act [Aug. 17, 2006].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 110(*l*)(1) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

For effective date of amendment by section 316(g)(2) of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of Title 42.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 702(d) of Pub. L. 103–465 provided that: ''The amendments made by this section [amending this section, sections 3306 and 3402 of this title, and section 503 of Title 42, The Public Health and Welfare] shall apply to payments made after December 31, 1996.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 302(b) of Pub. L. 102–164 provided that: ''The amendments made by this section [amending this section] section shall apply in the case of compensation paid for weeks beginning on or after the date of the enactment of this Act [Nov. 15, 1991].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101–649, set out as a note under section 1101 of Title 8, Aliens and Nationality.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 applicable to recoveries made on or after Apr. 7, 1986, and applicable with respect to overpayments made before, on, or after such date, see section 12401(c) of Pub. L. 99–272, set out as a note under section 503 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 521(b) of Pub. L. 98–21 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply in the case of compensation paid for weeks beginning on or after April 1, 1984.

''(2) In the case of a State with respect to which the Secretary of Labor has determined that State legislation is required in order to comply with the amendment made by this section, the amendment made by this section shall apply in the case of compensation paid for weeks which begin on or after April 1, 1984, and after the end of the first session of the State legislature which begins after the date of the enactment of this Act [Apr. 20, 1983], or which began prior to the date of the enactment of this Act and remained in session for at least twenty-five calendar days after such date of enactment. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature.''

Section 523(c) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section and section 503 of Title 42, The Public Health and Welfare] shall take effect on the date of the enactment of this Act [Apr. 20, 1983].''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 193(b) of Pub. L. 97–248, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply to weeks of unemployment beginning after the date of the enactment of this Act [Sept. 3, 1982].

''(2) The amendment made by subsection (a) [amending this section], insofar as it requires retroactive payments of compensation to employees of educational institutions other than institutions of higher education (as defined in section 3304(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), shall not be a requirement for any State law before January 1, 1984.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 414(b) of Pub. L. 96–364 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to certifications of States for 1981 and subsequent years.''

EFFECTIVE DATE OF 1977 AMENDMENTS

Section 403(d) of Pub. L. 95–216 provided that: ''The amendments made by this section [enacting section 611 of Title 42, The Public Health and Welfare, and amending this section and section 602 of Title 42] shall be effective on the date of the enactment of this Act [Dec. 20, 1977].''

Section 2(b) of Pub. L. 95–171 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to weeks of unemployment which begin after December 31, 1977.''

Section 302(d)(1) of Pub. L. 95–19 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendment made by section 314 of the Unemployment Compensation Amendments of 1976.''

Section 302(d)(3) of Pub. L. 95–19 provided that: ''The amendments made by subsection (c) [amending this section] shall take effect as if included in the amendments made by section 115(c) of the Unemployment Compensation Amendments of 1976.''

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 115(d) of Pub. L. 94–566, as amended by Pub. L. 95–19, title III, § 301(a), Apr. 12, 1977, 91 Stat. 43, effective Oct. 20, 1976, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 3309 of this title] shall apply with respect to certifications of States for 1978 and subsequent years; except that—

''(A) the amendments made by subsections (a) and (b) [amending section 3309 of this title] shall only apply with respect to services performed after December 31, 1977; and

''(B) the amendments made by subsection (c) [amending this section and section 3309 of this title] shall only apply with respect to weeks of unemployment which begin after December 31, 1977.

''(2) In the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1977, the amendments made by subsection (c) [amending this section and section 3309 of this title] shall only apply with respect to weeks of unemployment which begin after December 31, 1978 (or if earlier, the date provided by State law).''

Section 116(f) of Pub. L. 94–566, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''EFFECTIVE DATES.—

''(1) SUBSECTIONS (a), (c) AND (d).—The amendments made by subsections (a), (c), and (d) [amending sections 202 and 205 of Pub. L. 91–373 and section 102 of Pub. L. 93–57 set out below, section 49d of Title 29, Labor, and section 1301 of Title 42, The Public Health and Welfare] shall take effect on the later of October 1, 1976, or the day after the day on which the Secretary of Labor approves under section 3304(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] an unemployment compensation law submitted to him by the Virgin Islands for approval.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending section 3306 of this title] shall apply with respect to remuneration paid after December 31 of the year in which the Secretary of Labor approves for the first time an unemployment compensation law submitted to him by the Virgin Islands for approval, for services performed after such December 31.

''(3) SUBSECTION (e).—The amendments made by subsection (e) [amending sections 8501, 8503, 8504, 8521, and 8522 of Title 5, Government Organization and Employees] shall apply with respect to benefit years beginning on or after the later of October 1, 1976, or the first day of the first week for which compensation becomes payable under an unemployment compensation law of the Virgin Islands which is approved by the Secretary of Labor under section 3304(a) of the Internal Revenue Code of 1986.''

Section 312(c) of Pub. L. 94–566, as amended by Pub. L. 95–19, title III, § 301(b), Apr. 12, 1977, 91 Stat. 43, effective Oct. 20, 1976, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply with respect to certifications of States for 1978 and subsequent years.

''(2) In the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1977, the amendments made by this section [amending this section] shall apply with respect to the certification of such State for 1979 and subsequent years.''

Section 314(b) of Pub. L. 94–566 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to certifications of States for 1978 and subsequent years, or for 1979 and subsequent years in the case of States the legislatures of which do not meet in a regular session which closes in the calendar year 1977.''

Section 506(c) of Pub. L. 94–566, as amended by Pub. L. 95–19, title III, § 301(c), Apr. 12, 1977, 91 Stat. 44, effective Oct. 20, 1976, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 3309 of this title] shall apply with respect to certifications of States for 1978 and subsequent years, but only with respect to services performed after December 31, 1977.

''(2) In the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1977, the amendments made by this section [amending this section and section 3309 of this title] shall apply with respect to the certification of such State for 1979 and subsequent years, but only with respect to services performed after December 31, 1978.''

[Section 301(d) of Pub. L. 95–19 provided that: ''The amendments made by this section [amending this Effective Date of 1976 Amendment note in three places] shall take effect on October 20, 1976.'']

EFFECTIVE DATE OF 1970 AMENDMENT

Section 104(d) of Pub. L. 91–373, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Subject to the provisions of paragraph (2), the amendments made by subsections (a) and (b) [amending this section and enacting section 3309 of this title] shall apply with respect to certifications of State laws for 1972 and subsequent years, but only with respect to service performed after December 31, 1971. The amendment made by subsection (c) [amending section 3303 of this title] shall take effect January 1, 1970.

''(2) Section 3304(a)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a) of this section) shall not be a requirement for the State law of any State prior to July 1, 1972, if the legislature of such State does not meet in a regular session which closes during the calendar year 1971.''

Section 108(b) of Pub. L. 91–373, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to certification of State laws for 1972 and subsequent years; except that section 3304(a)(12) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall not be a requirement for the State law of any State prior to July 1, 1972, if the legislature of such State does not meet in a regular session which closes during the calendar year 1971, or prior to January 1, 1975, if compliance with such requirement would necessitate a change in the constitution of such State.''

Section 121(b) of Pub. L. 91–373, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Subject to the provisions of paragraph (2), the amendments made by subsection (a) [amending this section] shall take effect January 1, 1972, and shall apply to the taxable year 1972 and taxable years thereafter.

''(2) Paragraphs (7) through (10) of section 3304(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a) of this section) shall not be requirements for the State law of any State prior to July 1, 1972, if the legislature of such State does not meet in a regular session which closes during the calendar year 1971.''

Amendment by section 142(f)–(h) of Pub. L. 91–373 applicable with respect to taxable year 1972 and taxable years thereafter, see section 142(i) of Pub. L. 91–373, set out as a note under section 3302 of this title.

TREATMENT OF ADDITIONAL REGULAR COMPENSATION

Pub. L. 111–92, § 8, Nov. 6, 2009, 123 Stat. 2988, provided that: ''The monthly equivalent of any additional com-

pensation paid by reason of section 2002 of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 438 [437]) shall be disregarded after the date of the enactment of this Act [Nov. 6, 2009] in considering the amount of income and assets of an individual for purposes of determining such individual's eligibility for, or amount of, benefits under the Supplemental Nutrition Assistance Program (SNAP).''

INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS

Pub. L. 111–5, div. B, title II, § 2002, Feb. 17, 2009, 123 Stat. 437, as amended by Pub. L. 111–118, div. B, § 1009(a)(2), Dec. 19, 2009, 123 Stat. 3471; Pub. L. 111–144, § 2(a)(2), Mar. 2, 2010, 124 Stat. 42; Pub. L. 111–157, § 2(a)(2), Apr. 15, 2010, 124 Stat. 1116, provided that:

''(a) FEDERAL-STATE AGREEMENTS.—Any State which desires to do so may enter into and participate in an agreement under this section with the Secretary of Labor (hereinafter in this section referred to as the 'Secretary'). Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

''(b) PROVISIONS OF AGREEMENT.—

''(1) ADDITIONAL COMPENSATION.—Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to the amount determined under the State law (before the application of this paragraph) plus an additional $25.

''(2) ALLOWABLE METHODS OF PAYMENT.—Any additional compensation provided for in accordance with paragraph (1) shall be payable either—

''(A) as an amount which is paid at the same time and in the same manner as any regular compensation otherwise payable for the week involved; or

''(B) at the option of the State, by payments which are made separately from, but on the same weekly basis as, any regular compensation otherwise payable.

''(c) NONREDUCTION RULE.—An agreement under this section shall not apply (or shall cease to apply) with respect to a State upon a determination by the Secretary that the method governing the computation of regular compensation under the State law of that State has been modified in a manner such that—

''(1) the average weekly benefit amount of regular compensation which will be payable during the period of the agreement (determined disregarding any additional amounts attributable to the modification described in subsection (b)(1)) will be less than

''(2) the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the State law, as in effect on December 31, 2008.

''(d) PAYMENTS TO STATES.—

''(1) IN GENERAL.—

''(A) FULL REIMBURSEMENT.—There shall be paid to each State which has entered into an agreement under this section an amount equal to 100 percent of—

''(i) the total amount of additional compensation (as described in subsection (b)(1)) paid to individuals by the State pursuant to such agreement; and

''(ii) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary).

''(B) TERMS OF PAYMENTS.—Sums payable to any State by reason of such State's having an agreement under this section shall be payable, either in advance or by way of reimbursement (as determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

''(2) CERTIFICATIONS.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section.

''(3) APPROPRIATION.—There are appropriated from the general fund of the Treasury, without fiscal year limitation, such sums as may be necessary for purposes of this subsection.

''(e) APPLICABILITY.—

''(1) IN GENERAL.—An agreement entered into under this section shall apply to weeks of unemployment—

''(A) beginning after the date on which such agreement is entered into; and

''(B) ending on or before June 2, 2010.

''(2) TRANSITION RULE FOR INDIVIDUALS REMAINING ENTITLED TO REGULAR COMPENSATION AS OF JUNE 2, 2010.—In the case of any individual who, as of the date specified in paragraph (1)(B), has not yet exhausted all rights to regular compensation under the State law of a State with respect to a benefit year that began before such date, additional compensation (as described in subsection (b)(1)) shall continue to be payable to such individual for any week beginning on or after such date for which the individual is otherwise eligible for regular compensation with respect to such benefit year.

''(3) TERMINATION.—Notwithstanding any other provision of this subsection, no additional compensation (as described in subsection (b)(1)) shall be payable for any week beginning after December 7, 2010.

''(f) FRAUD AND OVERPAYMENTS.—The provisions of section 4005 of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 122 Stat. 2356) [set out below] shall apply with respect to additional compensation (as described in subsection (b)(1)) to the same extent and in the same manner as in the case of emergency unemployment compensation.

''(g) APPLICATION TO OTHER UNEMPLOYMENT BENEFITS.—

''(1) IN GENERAL.—Each agreement under this section shall include provisions to provide that the purposes of the preceding provisions of this section shall be applied with respect to unemployment benefits described in subsection (i)(3) to the same extent and in the same manner as if those benefits were regular compensation.

''(2) ELIGIBILITY AND TERMINATION RULES.—Additional compensation (as described in subsection (b)(1))—

''(A) shall not be payable, pursuant to this subsection, with respect to any unemployment benefits described in subsection (i)(3) for any week beginning on or after the date specified in subsection (e)(1)(B), except in the case of an individual who was eligible to receive additional compensation (as so described) in connection with any regular compensation or any unemployment benefits described in subsection (i)(3) for any period of unemployment ending before such date; and

''(B) shall in no event be payable for any week beginning after the date specified in subsection (e)(3).

''(h) DISREGARD OF ADDITIONAL COMPENSATION FOR PURPOSES OF MEDICAID AND SCHIP.—The monthly equivalent of any additional compensation paid under this section shall be disregarded in considering the amount of income of an individual for any purposes under title XIX and title XXI of the Social Security Act [42 U.S.C. 1396 et seq., 1397aa et seq.].

''(i) DEFINITIONS.—For purposes of this section—

''(1) the terms 'compensation', 'regular compensation', 'benefit year', 'State', 'State agency', 'State law', and 'week' have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373] (26 U.S.C. 3304 note);

''(2) the term 'emergency unemployment compensation' means emergency unemployment compensation under title IV of the Supplemental Appropriations Act, 2008 (Public Law 110–252; 122 Stat. 2353) [set out below]; and

''(3) any reference to unemployment benefits described in this paragraph shall be considered to refer to—

''(A) extended compensation (as defined by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373, set out below]); and

''(B) unemployment compensation (as defined by section 85(b) of the Internal Revenue Code of 1986) provided under any program administered by a State under an agreement with the Secretary.''

[Pub. L. 111–157, § 2(c), Apr. 15, 2010, 124 Stat. 1117, provided that: ''The amendments made by this section [amending section 2002 of Pub. L. 111–5, set out above, and section 2005 of Pub. L. 111–5, section 5 of Pub. L. 110–449, and sections 4004 and 4007 of Pub. L. 110–252, set out below] shall take effect as if included in the enactment of the Temporary Extension Act of 2010 (Public Law 111–144).'']

FULL FEDERAL FUNDING OF EXTENDED UNEMPLOYMENT COMPENSATION FOR A LIMITED PERIOD

Pub. L. 111–5, div. B, title II, § 2005, Feb. 17, 2009, 123 Stat. 444, as amended by Pub. L. 111–118, div. B, § 1009(a)(3), Dec. 19, 2009, 123 Stat. 3471; Pub. L. 111–144, § 2(a)(3), Mar. 2, 2010, 124 Stat. 42; Pub. L. 111–157, § 2(a)(3), Apr. 15, 2010, 124 Stat. 1116; Pub. L. 111–205, § 2(a)(2), July 22, 2010, 124 Stat. 2236; Pub. L. 111–312, title V, § 501(a)(2), Dec. 17, 2010, 124 Stat. 3307, provided that:

''(a) IN GENERAL.—In the case of sharable extended compensation and sharable regular compensation paid for weeks of unemployment beginning after the date of the enactment of this section [Feb. 17, 2009] and before January 4, 2012, section 204(a)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373] (26 U.S.C. 3304 note) shall be applied by substituting '100 percent of' for 'one-half of'.

''(b) SPECIAL RULE.—At the option of a State, for any weeks of unemployment beginning after the date of the enactment of this section [Feb. 17, 2009] and before January 4, 2012, an individual's eligibility period (as described in section 203(c) of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373, set out below]) shall, for purposes of any determination of eligibility for extended compensation under the State law of such State, be considered to include any week which begins—

''(1) after the date as of which such individual exhausts all rights to emergency unemployment compensation; and

''(2) during an extended benefit period that began on or before the date described in paragraph (1).

''(c) LIMITED EXTENSION.—In the case of an individual who receives extended compensation with respect to 1 or more weeks of unemployment beginning after the date of the enactment of this Act [Feb. 17, 2009] and before January 4, 2012, the provisions of subsections (a) and (b) shall, at the option of a State, be applied by substituting 'ending before June 11, 2012' for 'before January 4, 2012'.

''(d) EXTENSION OF TEMPORARY FEDERAL MATCHING FOR THE FIRST WEEK OF EXTENDED BENEFITS FOR STATES WITH NO WAITING WEEK.—

''(1) IN GENERAL.—[Amended section 5 of Pub. L. 110–449, set out below.]

''(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of the Unemployment Compensation Extension Act of 2008 (Public Law 110–449).

''(e) DEFINITIONS.—For purposes of this section—

''(1) the terms 'sharable extended compensation' and 'sharable regular compensation' have the respective meanings given such terms under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373, set out below];

''(2) the terms 'extended compensation', 'State', 'State law', and 'week' have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373, set out below];

''(3) the term 'emergency unemployment compensation' means benefits payable to individuals under title IV of the Supplemental Appropriations Act, 2008 [Pub. L. 110–252, set out below] with respect to their unemployment; and

''(4) the term 'extended benefit period' means an extended benefit period as determined in accordance with applicable provisions of the Federal-State Extended Unemployment Compensation Act of 1970 [title II of Pub. L. 91–373, set out below].

''(f) REGULATIONS.—The Secretary of Labor may prescribe any operating instructions or regulations necessary to carry out this section.''

[Pub. L. 111–312, title V, § 501(c), Dec. 17, 2010, 124 Stat. 3307, provided that: ''The amendments made by this section [amending section 2005 of Pub. L. 111–5, set out above, and section 5 of Pub. L. 110–449 and sections 4004 and 4007 of Pub. L. 110–252, set out below] shall take effect as if included in the enactment of the Unemployment Compensation Extension Act of 2010 (Public Law 111–205).'']

[Pub. L. 111–205, § 2(d), July 22, 2010, 124 Stat. 2237, provided that: ''The amendments made by this section [amending section 2005 of Pub. L. 111–5, set out above, and section 5 of Pub. L. 110–449 and sections 4001, 4004, and 4007 of Pub. L. 110–252, set out below] shall take effect as if included in the enactment of the Continuing Extension Act of 2010 (Public Law 111–157).'']

[Amendment by Pub. L. 111–157 to section 2005 of Pub. L. 111–5, set out above, effective as if included in the enactment of Pub. L. 111–144, see section 2(c) of Pub. L. 111–157, set out following section 2002 of Pub. L. 111–5 above.]

TEMPORARY FEDERAL MATCHING FOR THE FIRST WEEK OF EXTENDED BENEFITS FOR STATES WITH NO WAITING WEEK

Pub. L. 110–449, § 5, Nov. 21, 2008, 122 Stat. 5015; as amended by Pub. L. 111–5, div. B, title II, § 2005(d)(1), Feb. 17, 2009, 123 Stat. 444; Pub. L. 111–118, div. B, § 1009(a)(4), Dec. 19, 2009, 123 Stat. 3471; Pub. L. 111–144, § 2(a)(4), Mar. 2, 2010, 124 Stat. 42; Pub. L. 111–157, § 2(a)(4), Apr. 15, 2010, 124 Stat. 1116; Pub. L. 111–205, § 2(a)(3), July 22, 2010, 124 Stat. 2236; Pub. L. 111–312, title V, § 501(a)(3), Dec. 17, 2010, 124 Stat. 3307, provided that: ''With respect to weeks of unemployment beginning after the date of the enactment of this Act [Nov. 21, 2008] and ending on or before June 10, 2012, subparagraph (B) of section 204(a)(2) of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373] (26 U.S.C. 3304 note) shall not apply.''

[Amendment by section 501(a)(3) of Pub. L. 111–312 to section 5 of Pub. L. 110–449, set out above, effective as if included in the enactment of Pub. L. 111–205, see section 501(c) of Pub. L. 111–312, set out following section 2005 of Pub. L. 111–5 above.]

[Amendment by section 2(a)(3) of Pub. L. 111–205 to section 5 of Pub. L. 110–449, set out above, effective as if included in the enactment of Pub. L. 111–157, see section 2(d) of Pub. L. 111–205, set out following section 2005 of Pub. L. 111–5 above.]

[Amendment by Pub. L. 111–157 to section 5 of Pub. L. 110–449, set out above, effective as if included in the enactment of Pub. L. 111–144, see section 2(c) of Pub. L. 111–157, set out following section 2002 of Pub. L. 111–5 above.]

EMERGENCY UNEMPLOYMENT COMPENSATION, 2008

Pub. L. 110–252, title IV, June 30, 2008, 122 Stat. 2353, as amended by Pub. L. 110–449, §§2–4, Nov. 21, 2008, 122 Stat. 5014, 5015; Pub. L. 111–5, div. B, title II, §2001, Feb. 17, 2009, 123 Stat. 436; Pub. L. 111–92, §§2(a), 3(a), (b), 4(a), (b), 5, 6, Nov. 6, 2009, 123 Stat. 2984–2987; Pub. L. 111–118, div. B, §1009(a)(1), (b), Dec. 19, 2009, 123 Stat. 3471; Pub. L. 111–144, §2(a)(1), (b), Mar. 2, 2010, 124 Stat. 42; Pub. L. 111–157, §2(a)(1), (b), Apr. 15, 2010, 124 Stat. 1116; Pub. L. 111–205, §§2(a)(1), (b), (c), 3(a), 4, July 22, 2010, 124 Stat. 2236–2238; Pub. L. 111–312, title V, §501(a)(1), (b), Dec. 17, 2010, 124 Stat. 3307, provided that:

''FEDERAL-STATE AGREEMENTS

''SEC. 4001. (a) IN GENERAL.—Any State which desires to do so may enter into and participate in an agreement under this title with the Secretary of Labor (in this title referred to as the 'Secretary'). Any State which is a party to an agreement under this title may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

''(b) PROVISIONS OF AGREEMENT.—Any agreement under subsection (a) shall provide that the State agency of the State will make payments of emergency unemployment compensation to individuals who—

''(1) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before May 1, 2007);

''(2) have no rights to regular compensation or extended compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law (except as provided under subsection (e)); and

''(3) are not receiving compensation with respect to such week under the unemployment compensation law of Canada.

''(c) EXHAUSTION OF BENEFITS.—For purposes of subsection (b)(1), an individual shall be deemed to have exhausted such individual's rights to regular compensation under a State law when—

''(1) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual's base period; or

''(2) such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

''(d) WEEKLY BENEFIT AMOUNT, ETC.—For purposes of any agreement under this title—

''(1) the amount of emergency unemployment compensation which shall be payable to any individual for any week of total unemployment shall be equal to the amount of the regular compensation (including dependents' allowances) payable to such individual during such individual's benefit year under the State law for a week of total unemployment;

''(2) the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof (including terms and conditions relating to availability for work, active search for work, and refusal to accept work) shall apply to claims for emergency unemployment compensation and the payment thereof, except—

''(A) that an individual shall not be eligible for emergency unemployment compensation under this title unless, in the base period with respect to which the individual exhausted all rights to regular compensation under the State law, the individual had 20 weeks of full-time insured employment or the equivalent in insured wages, as determined under the provisions of the State law implementing section 202(a)(5) of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373] (26 U.S.C. 3304 note); and

''(B) where otherwise inconsistent with the provisions of this title or with the regulations or operating instructions of the Secretary promulgated to carry out this title; and

''(3) the maximum amount of emergency unemployment compensation payable to any individual for whom an emergency unemployment compensation account is established under section 4002 shall not exceed the amount established in such account for such individual.

''(e) ELECTION BY STATES.—Notwithstanding any other provision of Federal law (and if State law permits), the Governor of a State that is in an extended benefit period may provide for the payment of emergency unemployment compensation prior to extended compensation to individuals who otherwise meet the requirements of this section.

''(f) UNAUTHORIZED ALIENS INELIGIBLE.—A State shall require as a condition of eligibility for emergency unemployment compensation under this Act [probably means ''this title''] that each alien who receives such compensation must be legally authorized to work in the United States, as defined for purposes of the Federal Unemployment Tax Act (26 U.S.C. 3301 et seq.). In determining whether an alien meets the requirements of this subsection, a State must follow the procedures provided in section 1137(d) of the Social Security Act (42 U.S.C. 1320b–7(d)).

''(g) NONREDUCTION RULE.—An agreement under this section shall not apply (or shall cease to apply) with respect to a State upon a determination by the Secretary that the method governing the computation of regular compensation under the State law of that State has been modified in a manner such that—

''(1) the average weekly benefit amount of regular compensation which will be payable during the period of the agreement occurring on or after June 2, 2010 (determined disregarding any additional amounts attributable to the modification described in section 2002(b)(1) of the Assistance for Unemployed Workers and Struggling Families Act, as contained in Public Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 438)), will be less than

''(2) the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the State law, as in effect on June 2, 2010.

''EMERGENCY UNEMPLOYMENT COMPENSATION ACCOUNT

''SEC. 4002. (a) IN GENERAL.—Any agreement under this title shall provide that the State will establish, for each eligible individual who files an application for emergency unemployment compensation, an emergency unemployment compensation account with respect to such individual's benefit year.

''(b) AMOUNT IN ACCOUNT.—

''(1) IN GENERAL.—The amount established in an account under subsection (a) shall be equal to the lesser of—

''(A) 80 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual during the individual's benefit year under such law, or

''(B) 20 times the individual's average weekly benefit amount for the benefit year.

''(2) WEEKLY BENEFIT AMOUNT.—For purposes of this subsection, an individual's weekly benefit amount for any week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

''(c) SPECIAL RULE.—

''(1) IN GENERAL.—At the time that the amount established in an individual's account under subsection (b)(1) is exhausted, such account shall be augmented by an amount equal to the lesser of—

''(A) 54 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual during the individual's benefit year under the State law, or

''(B) 14 times the individual's average weekly benefit amount (as determined under subsection (b)(2)) for the benefit year.

''(2) LIMITATION.—The account of an individual may be augmented not more than once under this subsection.

''(d) THIRD-TIER EMERGENCY UNEMPLOYMENT COMPENSATION.—

''(1) IN GENERAL.—If, at the time that the amount added to an individual's account under subsection (c)(1) (hereinafter 'second-tier emergency unemployment compensation') is exhausted or at any time thereafter, such individual's State is in an extended benefit period (as determined under paragraph (2)), such account shall be further augmented by an amount (hereinafter 'third-tier emergency unemployment compensation') equal to the lesser of—

''(A) 50 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual during the individual's benefit year under the State law; or

''(B) 13 times the individual's average weekly benefit amount (as determined under subsection (b)(2)) for the benefit year.

''(2) EXTENDED BENEFIT PERIOD.—For purposes of paragraph (1), a State shall be considered to be in an extended benefit period, as of any given time, if—

''(A) such a period would then be in effect for such State under such Act [probably means title II of Pub. L. 91–373, set out below] if section 203(d) of such Act—

''(i) were applied by substituting '4' for '5' each place it appears; and

''(ii) did not include the requirement under paragraph (1)(A) thereof; or

''(B) such a period would then be in effect for such State under such Act if—

''(i) section 203(f) of such Act were applied to such State (regardless of whether the State by law had provided for such application); and

''(ii) such section 203(f)—

''(I) were applied by substituting '6.0' for '6.5' in paragraph (1)(A)(i) thereof; and

''(II) did not include the requirement under paragraph (1)(A)(ii) thereof.

''(3) LIMITATION.—The account of an individual may be augmented not more than once under this subsection.

''(e) FOURTH-TIER EMERGENCY UNEMPLOYMENT COMPENSATION.—

''(1) IN GENERAL.—If, at the time that the amount added to an individual's account under subsection (d)(1) (third-tier emergency unemployment compensation) is exhausted or at any time thereafter, such individual's State is in an extended benefit period (as determined under paragraph (2)), such account shall be further augmented by an amount (hereinafter 'fourth-tier emergency unemployment compensation') equal to the lesser of—

''(A) 24 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual during the individual's benefit year under the State law; or

''(B) 6 times the individual's average weekly benefit amount (as determined under subsection (b)(2)) for the benefit year.

''(2) EXTENDED BENEFIT PERIOD.—For purposes of paragraph (1), a State shall be considered to be in an extended benefit period, as of any given time, if—

''(A) such a period would then be in effect for such State under such Act [probably means title II of Pub. L. 91–373, set out below] if section 203(d) of such Act—

''(i) were applied by substituting '6' for '5' each place it appears; and

''(ii) did not include the requirement under paragraph (1)(A) thereof; or

''(B) such a period would then be in effect for such State under such Act if—

''(i) section 203(f) of such Act were applied to such State (regardless of whether the State by law had provided for such application); and

''(ii) such section 203(f)—

''(I) were applied by substituting '8.5' for '6.5' in paragraph (1)(A)(i) thereof; and

''(II) did not include the requirement under paragraph (1)(A)(ii) thereof.

''(3) LIMITATION.—The account of an individual may be augmented not more than once under this subsection.

''(f) COORDINATION RULES.—

''(1) COORDINATION WITH EXTENDED COMPENSATION.—Notwithstanding an election under section 4001(e) by a State to provide for the payment of emergency unemployment compensation prior to extended compensation, such State may pay extended compensation to an otherwise eligible individual prior to any emergency unemployment compensation under subsection (c), (d), or (e) (by reason of the amendments made by sections 2, 3, and 4 of the Worker, Homeownership, and Business Assistance Act of 2009 [Pub. L. 111–92]), if such individual claimed extended compensation for at least 1 week of unemployment after the exhaustion of emergency unemployment compensation under subsection (b) (as such subsection was in effect on the day before the date of the enactment of this subsection [Nov. 6, 2009]).

''(2) COORDINATION WITH TIERS II, III, AND IV.—If a State determines that implementation of the increased entitlement to second-tier emergency unemployment compensation by reason of the amendments made by section 2 of the Worker, Homeownership, and Business Assistance Act of 2009 [Pub. L. 111–92] would unduly delay the prompt payment of emergency unemployment compensation under this title by reason of the amendments made by such Act, such State may elect to pay third-tier emergency unemployment compensation prior to the payment of such increased second-tier emergency unemployment compensation until such time as such State determines that such increased second-tier emergency unemployment compensation may be paid without such undue delay. If a State makes the election under the preceding sentence, then, for purposes of determining whether an account may be augmented for fourth-tier emergency unemployment compensation under subsection (e), such State shall treat the date of exhaustion of such increased second-tier emergency unemployment compensation as the date of exhaustion of third-tier emergency unemployment compensation, if such date is later than the date of exhaustion of the third-tier emergency unemployment compensation.

''(g) COORDINATION OF EMERGENCY UNEMPLOYMENT COMPENSATION WITH REGULAR COMPENSATION.—

''(1) If—

''(A) an individual has been determined to be entitled to emergency unemployment compensation with respect to a benefit year,

''(B) that benefit year has expired,

''(C) that individual has remaining entitlement to emergency unemployment compensation with respect to that benefit year, and

''(D) that individual would qualify for a new benefit year in which the weekly benefit amount of regular compensation is at least either $100 or 25 percent less than the individual's weekly benefit amount in the benefit year referred to in subparagraph (A),

then the State shall determine eligibility for compensation as provided in paragraph (2).

''(2) For individuals described in paragraph (1), the State shall determine whether the individual is to be paid emergency unemployment compensation or regular compensation for a week of unemployment using one of the following methods:

''(A) The State shall, if permitted by State law, establish a new benefit year, but defer the payment of regular compensation with respect to that new benefit year until exhaustion of all emergency unemployment compensation payable with respect to the benefit year referred to in paragraph (1)(A);

''(B) The State shall, if permitted by State law, defer the establishment of a new benefit year

(which uses all the wages and employment which would have been used to establish a benefit year but for the application of this paragraph), until exhaustion of all emergency unemployment compensation payable with respect to the benefit year referred to in paragraph(1)(A);

''(C) The State shall pay, if permitted by State law—

''(i) regular compensation equal to the weekly benefit amount established under the new benefit year, and

''(ii) emergency unemployment compensation equal to the difference between that weekly benefit amount and the weekly benefit amount for the expired benefit year; or

''(D) The State shall determine rights to emergency unemployment compensation without regard to any rights to regular compensation if the individual elects to not file a claim for regular compensation under the new benefit year.

''PAYMENTS TO STATES HAVING AGREEMENTS FOR THE PAYMENT OF EMERGENCY UNEMPLOYMENT COMPENSATION

''SEC. 4003. (a) GENERAL RULE.—There shall be paid to each State that has entered into an agreement under this title an amount equal to 100 percent of the emergency unemployment compensation paid to individuals by the State pursuant to such agreement.

''(b) TREATMENT OF REIMBURSABLE COMPENSATION.—No payment shall be made to any State under this section in respect of any compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other than this title or chapter 85 of title 5, United States Code. A State shall not be entitled to any reimbursement under such chapter 85 in respect of any compensation to the extent the State is entitled to reimbursement under this title in respect of such compensation.

''(c) DETERMINATION OF AMOUNT.—Sums payable to any State by reason of such State having an agreement under this title shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

''FINANCING PROVISIONS

''SEC. 4004. (a) IN GENERAL.—Funds in the extended unemployment compensation account (as established by section 905(a) of the Social Security Act (42 U.S.C. 1105(a))[)] of the Unemployment Trust Fund (as established by section 904(a) of such Act (42 U.S.C. 1104(a))[)] shall be used for the making of payments to States having agreements entered into under this title.

''(b) CERTIFICATION.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this title. The Secretary of the Treasury, prior to audit or settlement by the Government Accountability Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as so established) to the account of such State in the Unemployment Trust Fund (as so established).

''(c) ASSISTANCE TO STATES.—There are appropriated out of the employment security administration account (as established by section 901(a) of the Social Security Act (42 U.S.C. 1101(a))[)] of the Unemployment Trust Fund, without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act (42 U.S.C. 501 et seq.)) in meeting the costs of administration of agreements under this title.

''(d) APPROPRIATIONS FOR CERTAIN PAYMENTS.—There are appropriated from the general fund of the Treasury, without fiscal year limitation, to the extended unemployment compensation account (as so established) of the Unemployment Trust Fund (as so established) such sums as the Secretary estimates to be necessary to make the payments under this section in respect of—

''(1) compensation payable under chapter 85 of title 5, United States Code; and

''(2) compensation payable on the basis of services to which section 3309(a)(1) of the Internal Revenue Code of 1986 applies.

Amounts appropriated pursuant to the preceding sentence shall not be required to be repaid.

''(e) TRANSFER OF FUNDS.—Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated)—

''(1) to the extended unemployment compensation account (as established by section 905 of the Social Security Act [42 U.S.C. 1105]) such sums as the Secretary of Labor estimates to be necessary to make payments to States under this title by reason of—

''(A) the amendments made by section 2001(a) of the Assistance for Unemployed Workers and Struggling Families Act [title II of div. B of Pub. L. 111–5];

''(B) the amendments made by sections 2 through 4 of the Worker, Homeownership, and Business Assistance Act of 2009 [Pub. L. 111–92];

''(C) the amendments made by section 1009(a)(1) of the Department of Defense Appropriations Act, 2010 [Pub. L. 111–118];

''(D) the amendments made by section 2(a)(1) of the Temporary Extension Act of 2010 [Pub. L. 111–144];

''(E) the amendments made by section 2(a)(1) of the Continuing Extension Act of 2010 [Pub. L. 111–157];

''(F) the amendments made by section 2(a)(1) of the Unemployment Compensation Extension Act of 2010 [Pub. L. 111–205]; and

''(G) the amendments made by section 501(a)(1) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 [Pub. L. 111–312]; and

''(2) to the employment security administration account (as established by section 901 of the Social Security Act [42 U.S.C. 1101]) such sums as the Secretary of Labor estimates to be necessary for purposes of assisting States in meeting administrative costs by reason of the amendments referred to in paragraph (1).

There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.

''FRAUD AND OVERPAYMENTS

''SEC. 4005. (a) IN GENERAL.—If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of emergency unemployment compensation under this title to which such individual was not entitled, such individual—

''(1) shall be ineligible for further emergency unemployment compensation under this title in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

''(2) shall be subject to prosecution under section 1001 of title 18, United States Code.

''(b) REPAYMENT.—In the case of individuals who have received amounts of emergency unemployment com-

pensation under this title to which they were not entitled, the State shall require such individuals to repay the amounts of such emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

''(1) the payment of such emergency unemployment compensation was without fault on the part of any such individual; and

''(2) such repayment would be contrary to equity and good conscience.

''(c) RECOVERY BY STATE AGENCY.—

''(1) IN GENERAL.—The State agency may recover the amount to be repaid, or any part thereof, by deductions from any emergency unemployment compensation payable to such individual under this title or from any unemployment compensation payable to such individual under any State or Federal unemployment compensation law administered by the State agency or under any other State or Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the emergency unemployment compensation to which they were not entitled, except that no single deduction may exceed 50 percent of the weekly benefit amount from which such deduction is made.

''(2) OPPORTUNITY FOR HEARING.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

''(d) REVIEW.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

''DEFINITIONS

''SEC. 4006. In this title, the terms 'compensation', 'regular compensation', 'extended compensation', 'benefit year', 'base period', 'State', 'State agency', 'State law', and 'week' have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373] (26 U.S.C. 3304 note).

''APPLICABILITY

''SEC. 4007. (a) IN GENERAL.—Except as provided in subsection (b), an agreement entered into under this title shall apply to weeks of unemployment—

''(1) beginning after the date on which such agreement is entered into; and

''(2) ending on or before January 3, 2012.

''(b) TRANSITION FOR AMOUNT REMAINING IN ACCOUNT.—

''(1) IN GENERAL.—Subject to paragraphs (2) and (3), in the case of an individual who has amounts remaining in an account established under section 4002 as of the last day of the last week (as determined in accordance with the applicable State law) ending on or before January 3, 2012, emergency unemployment compensation shall continue to be payable to such individual from such amounts for any week beginning after such last day for which the individual meets the eligibility requirements of this title.

''(2) NO AUGMENTATION AFTER JANUARY 3, 2012.—If the amount established in an individual's account under subsection (b)(1) is exhausted after January 3, 2012, then subsections (c), (d), and (e) of section 4002 of section 4002 [sic] shall not apply and such account shall not be augmented under such section, regardless of whether such individual's State is in an extended benefit period (as determined under paragraph (2) of such subsection (c), (d), or (e) (as the case may be)) (as the case may be)) [sic].

''(3) TERMINATION.—No compensation under this title shall be payable for any week beginning after June 9, 2012.''

[Amendment by section 501(a)(1), (b) of Pub. L. 111–312 to sections 4004 and 4007 of Pub. L. 110–252, set out above, effective as if included in the enactment of Pub. L. 111–205, see section 501(c) of Pub. L. 111–312, set out following section 2005 of Pub. L. 111–5 above.]

[Amendment by section 2(a)(1), (b), (c) of Pub. L. 111–205 to sections 4001, 4004, and 4007 of Pub. L. 110–252, set out above, effective as if included in Pub. L. 111–157, see section 2(d) of Pub. L. 111–205, set out following section 2005 of Pub. L. 111–5 above.]

[Pub. L. 111–205, § 3(b), July 22, 2010, 124 Stat. 2238, provided that: ''The amendment made by this section [amending section 4002 of Pub. L. 110–252, set out above] shall apply to individuals whose benefit years, as described in section 4002(g)(1)(B) [of] the Supplemental Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C. 3304 note), as amended by this section, expire after the date of enactment of this Act [July 22, 2010].'']

[Amendment by Pub. L. 111–157 to sections 4004 and 4007 of Pub. L. 110–252, set out above, effective as if included in the enactment of Pub. L. 111–144, see section 2(c) of Pub. L. 111–157, set out following section 2002 of Pub. L. 111–5 above.]

[Pub. L. 111–92, § 2(b), Nov. 6, 2009, 123 Stat. 2984, provided that: ''The amendments made by this section [amending section 4002 of Pub. L. 110–252, set out above] shall apply as if included in the enactment of the Supplemental Appropriations Act, 2008 [Pub. L. 110–252], except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment commencing before the date of the enactment of this Act [Nov. 6, 2009].'']

[Pub. L. 111–92, § 3(c), Nov. 6, 2009, 123 Stat. 2985, provided that: ''The amendments made by this section [amending sections 4002 and 4007 of Pub. L. 110–252, set out above] shall apply as if included in the enactment of the Supplemental Appropriations Act, 2008 [Pub. L. 110–252], except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment commencing before the date of the enactment of this Act [Nov. 6, 2009].'']

[Pub. L. 111–92, § 4(c), Nov. 6, 2009, 123 Stat. 2986, provided that: ''The amendments made by this section [amending sections 4002 and 4007 of Pub. L. 110–252, set out above] shall apply as if included in the enactment of the Supplemental Appropriations Act, 2008 [Pub. L. 110–252], except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment commencing before the date of the enactment of this Act [Nov. 6, 2009].'']

[Pub. L. 110–449, § 6, Nov. 21, 2008, 122 Stat. 5015, provided that:

[''(a) IN GENERAL.—The amendments made by sections 2, 3, and 4 [amending title IV of Pub. L. 110–252, set out as a note above] shall apply as if included in the enactment of the Supplemental Appropriations Act, 2008 [Pub. L. 110–252], subject to subsection (b).

[''(b) ADDITIONAL BENEFITS.—In applying the amendments made by sections 2 and 3, any additional emergency unemployment compensation made payable by such amendments (which would not otherwise have been payable if such amendments had not been enacted) shall be payable only with respect to any week of unemployment beginning on or after the date of the enactment of this Act [Nov. 21, 2008].'']

ADDITIONAL TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION FOR DISPLACED AIRLINE RELATED WORKERS

Pub. L. 108–11, title IV, § 4002, Apr. 16, 2003, 117 Stat. 607, provided that:

''(a) DEFINITIONS.—For purposes of this section—

''(1) the term 'eligible individual' means an individual whose eligibility for temporary extended unemployment compensation under the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 21) [title II of Pub. L.

107–147, set out as a note below], as amended by Public Law 108–1 (117 Stat. 3), is or would be based on the exhaustion of regular compensation under State law, entitlement to which was based in whole or in part on qualifying employment performed during such individual's base period;

''(2) the term 'qualifying employment', with respect to an eligible individual, means employment—

''(A) with an air carrier, employment at a facility at an airport, or with an upstream producer or supplier for an air carrier; and

''(B) as determined by the Secretary, separation from which was due, in whole or in part, to—

''(i) reductions in service by an air carrier as a result of a terrorist action or security measure;

''(ii) a closure of an airport in the United States as a result of a terrorist action or security measure; or

''(iii) a military conflict with Iraq that has been authorized by Congress;

''(3) the term 'air carrier' means an air carrier that holds a certificate issued under chapter 411 of title 49, United States Code;

''(4) the term 'upstream producer' means a firm that performs additional, value-added, production processes, including firms that perform final assembly, finishing, or packaging of articles, for another firm;

''(5) the term 'supplier' means a firm that produces component parts for, or articles and contract services considered to be a part of the production process or services for, another firm;

''(6) the term 'Secretary' means the Secretary of Labor; and

''(7) the term 'terrorist action or security measure' means a terrorist attack on the United States on September 11, 2001, or a security measure taken in response to such attack.

''(b) ADDITIONAL TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION FOR ELIGIBLE INDIVIDUAL.—In the case of an eligible individual, the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 21), as amended by Public Law 108–1 (117 Stat. 3), shall be applied as if it had been amended in accordance with subsection (c).

''(c) MODIFICATIONS.—

''(1) IN GENERAL.—For purposes of subsection (b), the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 21), as amended by Public Law 108–1 (117 Stat. 3), shall be treated as if it had been amended as provided in this subsection.

''(2) PROGRAM EXTENSION.—Deem section 208 of the Temporary Extended Unemployment Compensation Act of 2002, as amended by Public Law 108–1 (117 Stat. 3), to be amended to read as follows:

''''SEC. 208. APPLICABILITY.

''''(a) IN GENERAL.—Subject to subsection (b), an agreement entered into under this title shall apply to weeks of unemployment—

''''(1) beginning after the date on which such agreement is entered into; and

''''(2) ending before December 29, 2003.

''''(b) TRANSITION FOR AMOUNT REMAINING IN ACCOUNT.—

''''(1) IN GENERAL.—Subject to paragraph (2), in the case of an individual who has amounts remaining in an account established under section 203 as of December 28, 2003, temporary extended unemployment compensation shall continue to be payable to such individual from such amounts for any week beginning after such date for which the individual meets the eligibility requirements of this title, including such compensation payable by reason of amounts deposited in such account after such date pursuant to the application of subsection (c) of such section.

''''(2) LIMITATION.—No compensation shall be payable by reason of paragraph (1) for any week beginning after December 26, 2004.'.

''(3) ADDITIONAL WEEKS OF BENEFITS.—Deem section 203 of the Temporary Extended Unemployment Compensation Act of 2002, as amended by Public Law 108–1 (117 Stat. 3), to be amended—

''(A) in subsection (b)(1)—

''(i) in subparagraph (A), by striking '50' and inserting '150'; and

''(ii) by striking '13' and inserting '39'; and

''(B) in subsection (c)(1), by inserting '⅓ of' after 'equal to'.

''(4) EFFECTIVE DATE OF MODIFICATIONS DESCRIBED IN PARAGRAPH (3).—

''(A) IN GENERAL.—The amendments described in paragraph (3)—

''(i) shall be deemed to have taken effect as if included in the enactment of the Temporary Extended Unemployment Compensation Act of 2002; but

''(ii) shall be treated as applying only with respect to weeks of unemployment beginning on or after the date of enactment of this Act [Apr. 16, 2003], subject to subparagraph (B).

''(B) SPECIAL RULES.—In the case of an eligible individual for whom a temporary extended unemployment account was established before the date of enactment of this Act [Apr. 16, 2003], the Temporary Extended Unemployment Compensation Act of 2002 (as amended by this section) shall be applied subject to the following:

''(i) Any amounts deposited in the individual's temporary extended unemployment compensation account by reason of section 203(c) of such Act (commonly known as 'TEUC–X amounts') before the date of enactment of this Act [Apr. 16, 2003] shall be treated as amounts deposited by reason of section 203(b) of such Act (commonly known as 'TEUC amounts'), as deemed to have been amended by paragraph (3)(A).

''(ii) For purposes of determining whether the individual is eligible for any TEUC–X amounts under such Act, as deemed to be amended by this subsection—

''(I) any determination made under section 203(c) of such Act before the application of the amendment described in paragraph (3)(B) shall be disregarded; and

''(II) any such determination shall instead be made by applying section 203(c) of such Act, as deemed to be amended by paragraph (3)(B), as of the time that all amounts established in such account in accordance with section 203(b) of such Act (as deemed to be amended under this subsection, and including any amounts described in clause (i)) are in fact exhausted.''

TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION

Pub. L. 107–147, title II, Mar. 9, 2002, 116 Stat. 26, as amended by Pub. L. 108–1, § 1(a), Jan. 8, 2003, 117 Stat. 3; Pub. L. 108–26, § 2(a), May 28, 2003, 117 Stat. 751; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814, provided that:

''SEC. 201. SHORT TITLE.

''This title may be cited as the 'Temporary Extended Unemployment Compensation Act of 2002'.

''SEC. 202. FEDERAL-STATE AGREEMENTS.

''(a) IN GENERAL.—Any State which desires to do so may enter into and participate in an agreement under this title with the Secretary of Labor (in this title referred to as the 'Secretary'). Any State which is a party to an agreement under this title may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

''(b) PROVISIONS OF AGREEMENT.—Any agreement under subsection (a) shall provide that the State agency of the State will make payments of temporary extended unemployment compensation to individuals who—

''(1) have exhausted all rights to regular compensation under the State law or under Federal law with

respect to a benefit year (excluding any benefit year that ended before March 15, 2001);

''(2) have no rights to regular compensation or extended compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law;

''(3) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

''(4) filed an initial claim for regular compensation on or after March 15, 2001.

''(c) EXHAUSTION OF BENEFITS.—For purposes of subsection (b)(1), an individual shall be deemed to have exhausted such individual's rights to regular compensation under a State law when—

''(1) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual's base period; or

''(2) such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

''(d) WEEKLY BENEFIT AMOUNT, ETC.—For purposes of any agreement under this title—

''(1) the amount of temporary extended unemployment compensation which shall be payable to any individual for any week of total unemployment shall be equal to the amount of the regular compensation (including dependents' allowances) payable to such individual during such individual's benefit year under the State law for a week of total unemployment;

''(2) the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall apply to claims for temporary extended unemployment compensation and the payment thereof, except—

''(A) that an individual shall not be eligible for temporary extended unemployment compensation under this title unless, in the base period with respect to which the individual exhausted all rights to regular compensation under the State law, the individual had 20 weeks of full-time insured employment or the equivalent in insured wages, as determined under the provisions of the State law implementing section 202(a)(5) of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373] (26 U.S.C. 3304 note); and

''(B) where otherwise inconsistent with the provisions of this title or with the regulations or operating instructions of the Secretary promulgated to carry out this title; and

''(3) the maximum amount of temporary extended unemployment compensation payable to any individual for whom a temporary extended unemployment compensation account is established under section 203 shall not exceed the amount established in such account for such individual.

''(e) ELECTION BY STATES.—Notwithstanding any other provision of Federal law (and if State law permits), the Governor of a State that is in an extended benefit period may provide for the payment of temporary extended unemployment compensation in lieu of extended compensation to individuals who otherwise meet the requirements of this section. Such an election shall not require a State to trigger off an extended benefit period.

''SEC. 203. TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT.

''(a) IN GENERAL.—Any agreement under this title shall provide that the State will establish, for each eligible individual who files an application for temporary extended unemployment compensation, a temporary extended unemployment compensation account with respect to such individual's benefit year.

''(b) AMOUNT IN ACCOUNT.—

''(1) IN GENERAL.—The amount established in an account under subsection (a) shall be equal to the lesser of—

''(A) 50 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual during the individual's benefit year under such law, or

''(B) 13 times the individual's average weekly benefit amount for the benefit year.

''(2) WEEKLY BENEFIT AMOUNT.—For purposes of this subsection, an individual's weekly benefit amount for any week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

''(c) SPECIAL RULE.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section, if, at the time that the individual's account is exhausted, such individual's State is in an extended benefit period (as determined under paragraph (2)), then, such account shall be augmented by an amount equal to the amount originally established in such account (as determined under subsection (b)(1)).

''(2) EXTENDED BENEFIT PERIOD.—For purposes of paragraph (1), a State shall be considered to be in an extended benefit period if, at the time of exhaustion (as described in paragraph (1))—

''(A) such a period is then in effect for such State under the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373]; or

''(B) such a period would then be in effect for such State under such Act if section 203(d) of such Act were applied as if it had been amended by striking '5' each place it appears and inserting '4'.

''SEC. 204. PAYMENTS TO STATES HAVING AGREEMENTS FOR THE PAYMENT OF TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION.

''(a) GENERAL RULE.—There shall be paid to each State that has entered into an agreement under this title an amount equal to 100 percent of the temporary extended unemployment compensation paid to individuals by the State pursuant to such agreement.

''(b) TREATMENT OF REIMBURSABLE COMPENSATION.—No payment shall be made to any State under this section in respect of any compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other than this title or chapter 85 of title 5, United States Code. A State shall not be entitled to any reimbursement under such chapter 85 in respect of any compensation to the extent the State is entitled to reimbursement under this title in respect of such compensation.

''(c) DETERMINATION OF AMOUNT.—Sums payable to any State by reason of such State having an agreement under this title shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

''SEC. 205. FINANCING PROVISIONS.

''(a) IN GENERAL.—Funds in the extended unemployment compensation account (as established by section 905(a) of the Social Security Act (42 U.S.C. 1105(a)) of the Unemployment Trust Fund (as established by section 904(a) of such Act (42 U.S.C. 1104(a)) shall be used for the making of payments to States having agreements entered into under this title.

''(b) CERTIFICATION.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this title. The Secretary of the Treasury, prior to audit or settlement by the Government Accountability Office, shall make payments to the State in accordance

with such certification, by transfers from the extended unemployment compensation account (as so established) to the account of such State in the Unemployment Trust Fund (as so established).

''(c) ASSISTANCE TO STATES.—There are appropriated out of the employment security administration account (as established by section 901(a) of the Social Security Act (42 U.S.C. 1101(a)) of the Unemployment Trust Fund, without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act (42 U.S.C. 501 et seq.)) in meeting the costs of administration of agreements under this title.

''(d) APPROPRIATIONS FOR CERTAIN PAYMENTS.—There are appropriated from the general fund of the Treasury, without fiscal year limitation, to the extended unemployment compensation account (as so established) of the Unemployment Trust Fund (as so established) such sums as the Secretary estimates to be necessary to make the payments under this section in respect of—

''(1) compensation payable under chapter 85 of title 5, United States Code; and

''(2) compensation payable on the basis of services to which section 3309(a)(1) of the Internal Revenue Code of 1986 applies.

Amounts appropriated pursuant to the preceding sentence shall not be required to be repaid.

''SEC. 206. FRAUD AND OVERPAYMENTS.

''(a) IN GENERAL.—If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of temporary extended unemployment compensation under this title to which he was not entitled, such individual—

''(1) shall be ineligible for further temporary extended unemployment compensation under this title in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

''(2) shall be subject to prosecution under section 1001 of title 18, United States Code.

''(b) REPAYMENT.—In the case of individuals who have received amounts of temporary extended unemployment compensation under this title to which they were not entitled, the State shall require such individuals to repay the amounts of such temporary extended unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

''(1) the payment of such temporary extended unemployment compensation was without fault on the part of any such individual; and

''(2) such repayment would be contrary to equity and good conscience.

''(c) RECOVERY BY STATE AGENCY.—

''(1) IN GENERAL.—The State agency may recover the amount to be repaid, or any part thereof, by deductions from any temporary extended unemployment compensation payable to such individual under this title or from any unemployment compensation payable to such individual under any Federal unemployment compensation law administered by the State agency or under any other Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the temporary extended unemployment compensation to which they were not entitled, except that no single deduction may exceed 50 percent of the weekly benefit amount from which such deduction is made.

''(2) OPPORTUNITY FOR HEARING.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

''(d) REVIEW.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

''SEC. 207. DEFINITIONS.

''In this title, the terms 'compensation', 'regular compensation', 'extended compensation', 'additional compensation', 'benefit year', 'base period', 'State', 'State agency', 'State law', and 'week' have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

''SEC. 208. APPLICABILITY.

''(a) IN GENERAL.—Except as provided in subsection (b), an agreement entered into under this title shall apply to weeks of unemployment—

''(1) beginning after the date on which such agreement is entered into; and

''(2) ending on or before December 31, 2003.

''(b) TRANSITION FOR AMOUNT REMAINING IN ACCOUNT.—

''(1) IN GENERAL.—Subject to paragraphs (2) and (3), in the case of an individual who has amounts remaining in an account established under section 203 as of December 31, 2003, temporary extended unemployment compensation shall continue to be payable to such individual from such amounts for any week beginning after such date for which the individual meets the eligibility requirements of this title.

''(2) NO AUGMENTATION AFTER DECEMBER 31, 2003.—If the account of an individual is exhausted after December 31, 2003, then section 203(c) shall not apply and such account shall not be augmented under such section, regardless of whether such individual's State is in an extended benefit period (as determined under paragraph (2) of such section).

''(3) LIMITATION.—No compensation shall be payable by reason of paragraph (1) for any week beginning after March 31, 2004.

''SEC. 209. SPECIAL REED ACT TRANSFER IN FISCAL YEAR 2002.

''(a) REPEAL OF CERTAIN PROVISIONS ADDED BY THE BALANCED BUDGET ACT OF 1997.—

''(1) IN GENERAL.—[Amended section 1103 of Title 42, The Public Health and Welfare.]

''(2) SAVINGS PROVISION.—Any amounts transferred before the date of enactment of this Act [Mar. 9, 2002] under the provision repealed by paragraph (1)(A) [amending section 1103 of Title 42] shall remain subject to section 903 of the Social Security Act [42 U.S.C. 1103], as last in effect before such date of enactment.

''(b) SPECIAL TRANSFER IN FISCAL YEAR 2002.—[Amended section 1103 of Title 42.]

''(c) LIMITATIONS ON TRANSFERS.—Section 903(b) of the Social Security Act [42 U.S.C. 1103(b)] shall apply to transfers under section 903(d) of such Act (as amended by this section). For purposes of the preceding sentence, such section 903(b) shall be deemed to be amended as follows:

''(1) By substituting 'the transfer date described in subsection (d)(5)' for 'October 1 of any fiscal year'.

''(2) By substituting 'remain in the Federal unemployment account' for 'be transferred to the Federal unemployment account as of the beginning of such October 1'.

''(3) By substituting 'fiscal year 2002 (after the transfer date described in subsection (d)(5))' for 'the fiscal year beginning on such October 1'.

''(4) By substituting 'under subsection (d)' for 'as of October 1 of such fiscal year'.

''(5) By substituting '(as of the close of fiscal year 2002)' for '(as of the close of such fiscal year)'.

''(d) TECHNICAL AMENDMENTS.—

''(1) [Amended sections 3304 and 3306 of this title.]

''(2) [Amended section 503 of Title 42.]

''(e) REGULATIONS.—The Secretary of Labor may prescribe any operating instructions or regulations necessary to carry out this section and the amendments made by this section.''

[Pub. L. 108–26, § 2(b), May 28, 2003, 117 Stat. 751, provided that: ''The amendments made by this section [amending section 208 of Pub. L. 107–147, set out above] shall take effect as if included in the enactment of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147 [title II]; 116 Stat. 21 [26]).'']

[Pub. L. 108–1, § 1(b), Jan. 8, 2003, 117 Stat. 4, provided that: ''The amendment made by this section [amending section 208 of Pub. L. 107–147, set out above] shall take effect as if included in the enactment of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147 [title II]; 116 Stat. 21 [26]).'']

PROFILING OF NEW CLAIMANTS FOR REGULAR UNEMPLOYMENT COMPENSATION

Pub. L. 103–6, § 4, Mar. 4, 1993, 107 Stat. 34, directed Secretary of Labor to establish program for encouraging adoption and implementation by all States of system of profiling all new claimants for regular unemployment compensation to determine which claimants might be likely to exhaust regular unemployment compensation and might need reemployment assistance services, directed Secretary to provide technical assistance and advice to States in development of model profiling systems and procedures for such systems and to provide to each State, from funds available for this purpose, such funds as determined necessary, and directed Secretary to report to Congress on operation and effectiveness of profiling systems adopted by States along with continuation and legislative recommendations, prior to repeal by Pub. L. 103–152, § 4(e), Nov. 24, 1993, 107 Stat. 1518.

TREATMENT OF PERSIAN GULF CRISIS RESERVISTS

Pub. L. 102–318, title I, § 104, July 3, 1992, 106 Stat. 293, provided that: ''If—

''(1) an individual who was a member of a reserve component of the Armed Forces was called for active duty after August 2, 1990, and before March 1, 1991,

''(2) such individual was receiving regular compensation, extended compensation, or a trade readjustment allowance for the week in which he was so called,

''(3) such individual served on such active duty for at least 90 consecutive days, and

''(4) such individual was entitled to regular compensation on the basis of his services on such active duty, but the weekly benefit amount was less than the benefit amount he received for the week referred to in paragraph (2),

such individual's weekly benefit amount under the Emergency Unemployment Compensation Act of 1991 [see section 101(d) of Pub. L. 102–164, formerly set out below] for any week beginning after the date of the enactment of this Act [July 3, 1992] shall be not less than the benefit amount he received for the week referred to in paragraph (2).''

STUDY AND REPORT BY FEDERAL ADVISORY COUNCIL ON SUSPENSION OF ELIGIBILITY REQUIREMENTS FOR UNEMPLOYMENT BENEFITS

Section 202(b)(2) of Pub. L. 102–318 directed Federal Advisory Council established under 42 U.S.C. 1108 to conduct a study of the provisions suspended by the amendment made by section 202(b)(1) of Pub. L. 102–318, enacting section 202(a)(7) of Pub. L. 91–373, set out below, and to submit, not later than Feb. 1, 1994, to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate, a report of its recommendations on such suspended provisions.

INFORMATION REQUIRED WITH RESPECT TO TAXATION OF UNEMPLOYMENT BENEFITS

Section 301 of Pub. L. 102–318 provided that:

''(a) INFORMATION ON UNEMPLOYMENT BENEFITS.—

''(1) GENERAL RULE.—The State agency in each State shall provide to an individual filing a claim for compensation under the State unemployment compensation law a written explanation of the Federal and State income taxation of unemployment benefits and of the requirements to make payments of estimated Federal and State income taxes.

''(2) STATE AGENCY.—For purposes of this subsection, the term 'State agency' has the meaning given such term by section 3306(e) of the Internal Revenue Code of 1986.

''(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1992.''

EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1991

Pub. L. 102–164, § 1, titles I, II, Nov. 15, 1991, 105 Stat. 1049, 1056, as amended by Pub. L. 102–182, § 3(a)(1)–(6), Dec. 4, 1991, 105 Stat. 1234; Pub. L. 102–244, §§ 1(a), (b), 2, Feb. 7, 1992, 106 Stat. 3, 4; Pub. L. 102–318, title I, §§ 101(a)–(d), 102(a), 103(a), 107, July 3, 1992, 106 Stat. 290–293, 295; Pub. L. 103–6, § 2(a)–(c), Mar. 4, 1993, 107 Stat. 33; Pub. L. 103–152, §§ 2(a)–(d), 3(a), Nov. 24, 1993, 107 Stat. 1516, 1517, known as the ''Emergency Unemployment Compensation Act of 1991'', established an emergency unemployment compensation program for individuals eligible during the period of Nov. 17, 1991, to Feb. 5, 1994, and directed the Secretary of Labor to carry out a job search assistance demonstration program with a final report to Congress on the effectiveness of the demonstration program due not later than 5 years after the commencement of the program.

DETERMINATION OF AMOUNT OF FEDERAL SHARE WITH RESPECT TO CERTAIN EXTENDED BENEFITS PAYMENTS

Pub. L. 100–203, title IX, § 9151, Dec. 22, 1987, 101 Stat. 1330–322, provided that: ''For the purpose of determining the amount of the Federal payment to any State under section 204(a)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 [section 204(a)(1) of Pub. L. 91–373, set out below] with respect to the implementation of paragraph (3) of section 202(a) of such Act [section 202(a) of Pub. L. 91–373, set out below] (as added by section 1024(a) of the Omnibus Reconciliation Act of 1980 [Pub. L. 96–499]), such paragraph shall be considered to apply only with respect to weeks of unemployment beginning after October 31, 1981, except that for any State in which the State legislature did not meet in 1981, it shall be considered to apply for such purpose only with respect to weeks of unemployment beginning after October 31, 1982.''

DEMONSTRATION PROGRAM TO PROVIDE SELF-EMPLOYMENT ALLOWANCES FOR ELIGIBLE INDIVIDUALS

Pub. L. 100–203, title IX, § 9152, Dec. 22, 1987, 101 Stat. 1330–322, as amended by Pub. L. 100–647, title VIII, § 8301, Nov. 10, 1988, 102 Stat. 3798, provided that:

''(a) IN GENERAL.—The Secretary of Labor (hereinafter in this section referred to as the 'Secretary') shall carry out a demonstration program under this section for the purpose of making available self-employment allowances to eligible individuals. To carry out such program, the Secretary shall enter into agreements with three States that—

''(1) apply to participate in such program, and

''(2) demonstrate to the Secretary that they are capable of implementing the provisions of the agreement.

''(b) SELECTION OF STATES.—(1) In determining whether to enter into an agreement with a State under this section, the Secretary shall take into consideration at least—

''(A) the availability and quality of technical assistance currently provided by agencies of the State to the self-employed;

''(B) existing local market conditions and the business climate for new, small business enterprises in the State;

''(C) the adequacy of State resources to carry out a regular unemployment compensation program and a program under this section;

''(D) the range and extent of specialized services to be provided by the State to individuals covered by such an agreement;

''(E) the design of the evaluation to be applied by the State to the program; and

''(F) the standards which are to be utilized by the State for the purpose of assuring that individuals who will receive self-employment assistance under this section will have sufficient experience (or training) and ability to be self employed.

''(2) The Secretary may not enter into an agreement with any State under this section unless the Secretary makes a determination that the State's unemployment compensation program has adequate reserves.

''(c) PROVISIONS OF AGREEMENTS.—Any agreement entered into with a State under this section shall provide that—

''(1) each individual who is an eligible individual with respect to any benefit year beginning during the three-year period commencing on the date on which such agreement is entered into shall receive a self-employment allowance;

''(2) self-employment allowances made to any individual under this section shall be made in the same amount, on the same terms, and subject to the same conditions as regular or extended unemployment compensation, as the case may be, paid by such State; except that—

''(A) State and Federal requirements relating to availability for work, active search for work, or refusal to accept suitable work shall not apply to such individual; and

''(B) such individual shall be considered to be unemployed for purposes of the State and Federal laws applicable to unemployment compensation, as long as the individual meets the requirements applicable under this section to such individual;

''(3) to the extent that such allowances are made to an individual under this section, an amount equal to the amount of such allowances shall be charged against the amount that may be paid to such individual under State law for regular or extended unemployment compensation, as the case may be;

''(4) the total amount paid to an individual with respect to any benefit year under this section may not exceed the total amount that could be paid to such individual for regular or extended unemployment compensation, as the case may be, with respect to such benefit year under State law;

''(5) the State shall implement a program that—

''(A) is approved by the Secretary;

''(B) will not result in any cost to the Unemployment Trust Fund established by section 904(a) of the Social Security Act [42 U.S.C. 1104(a)] in excess of the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section;

''(C) is designed to select and assist individuals for self-employment allowances, monitor the individual's self-employment, and provide, as described in subsection (d), to the Secretary a complete evaluation of the use of such allowances; and

''(D) otherwise meets the requirements of this section; and

''(6) the State, from its general revenue funds, shall—

''(A) repay to the Unemployment Trust Fund any cost incurred by the State and charged to the Fund which exceeds the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section; and

''(B) in any case in which any excess cost described in subparagraph (A) is not repaid in the fiscal year in which it was charged to the Fund, pay to the Fund an amount of interest, on the outstanding balance of such excess cost, which is sufficient (when combined with any repayment by the State described in subparagraph (A)) to reimburse the Fund for any loss which would not have been incurred if such excess cost had not been incurred.

''(d) EVALUATION.—(1) Each State that enters into an agreement under this section shall carry out an evaluation of its activities under this section. Such evaluation shall be based on an experimental design with random assignment between a treatment group and a control group with not more than one-half of the individuals receiving assistance at any one time being assigned to the treatment group.

''(2) The Secretary shall use the data provided from such evaluation to analyze the benefits and the costs of the program carried out under this section, to formulate the reports under subsection (g), and to estimate any excess costs described in subsection (c)(6)(A).

''(e) FINANCING.—(1) Notwithstanding section 303(a)(5) of the Social Security Act [42 U.S.C. 503(a)(5)] and section 3304(a)(4) of the Internal Revenue Code of 1986, amounts in the unemployment fund of a State may be used by a State to make payments (exclusive of expenses of administration) for self-employment allowances made under this section to an individual who is receiving them in lieu of regular unemployment compensation.

''(2) In any case in which a self-employment allowance is made under this section to an individual in lieu of extended unemployment compensation under the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373, title II, set out below], payments made under this section for self-employment allowances shall be considered to be compensation described in section 204(a)(1) of such Act and paid under State law.

''(f) LIMITATION.—No funds made available to a State under title III of the Social Security Act [42 U.S.C. 501 et seq.] or any other Federal law may be used for the purpose of administering the program carried out by such State under this section.

''(g) REPORT TO CONGRESS.—(1) Not later than three years after the date of the enactment of this Act [Dec. 22, 1987], the Secretary shall submit an interim report to the Congress on the effectiveness of the demonstration program carried out under this section. Such report shall include—

''(A) information on the extent to which this section has been utilized;

''(B) an analysis of any barriers to such utilization; and

''(C) an analysis of the feasibility of extending the provisions of this section to individuals not covered by State unemployment compensation laws.

''(2) Not later than six years after the date of the enactment of this Act [Dec. 22, 1987], the Secretary shall submit a final report to the Congress on such program.

''(h) FRAUD AND OVERPAYMENTS.—(1) If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received payment under this section to which he was not entitled, such individual shall be—

''(A) ineligible for further assistance under this section; and

''(B) subject to prosecution under section 1001 of title 18, United States Code.

''(2)(A) If any person received any payment under this section to which such person was not entitled, the State is authorized to require such person to repay such assistance; except that the State agency may waive such repayment if it determines that—

''(i) the providing of such assistance or making of such payment was without fault on the part of such person; and

''(ii) such repayment would be contrary to equity and good conscience.

''(B) No repayment shall be required under subparagraph (A) until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the person, and the determination has become final. Any determination under such subparagraph shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

''(i) DEFINITIONS.—For purposes of this section—

''(1) the term 'eligible individual' means, with respect to any benefit year, an individual who—

''(A) is eligible to receive regular or extended compensation under the State law during such benefit year;

''(B) is likely to receive unemployment compensation for the maximum number of weeks that such compensation is made available under the State law during such benefit year;

''(C) submits an application to the State agency for a self-employment allowance under this section; and

''(D) meets applicable State requirements,

except that not more than (i) 3 percent of the number of individuals eligible to receive regular compensation in a State at the beginning of a fiscal year, or (ii) the number of persons who exhausted their unemployment compensation benefits in the fiscal year ending before such fiscal year, whichever is lesser, may be considered as eligible individuals for such State for purposes of this section during such fiscal year;

''(2) the term 'self-employment allowance' means compensation paid under this section for the purpose of assisting an eligible individual with such individual's self-employment; and

''(3) the terms 'compensation', 'extended compensation', 'regular compensation', 'benefit year', 'State', and 'State law', have the respective meanings given to such terms by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373, set out below].''

SUPPLEMENTAL UNEMPLOYMENT COMPENSATION FOR CERTAIN INDIVIDUALS

Section 12402 of Pub. L. 99–272 provided that:

''(a) IN GENERAL.—If—

''(1) an individual was receiving Federal supplemental compensation for the week which includes March 31, 1985, or a series of consecutive weeks which began with such week, and

''(2) such individual did not meet the consecutive-week eligibility requirements of the Federal Supplemental Compensation Act of 1982 [subtitle A (§§ 601–606) of title VI of Pub. L. 97–248, set out below] during any period of 1 or more subsequent weeks by reason of performing temporary disaster services described in subsection (e),

weeks in such period shall be disregarded for purposes of the consecutive-week requirement of section 602(f)(2)(B) of such Act [section 602(f)(2)(B) of Pub. L. 97–248, set out below], and, notwithstanding the requirements of State law relating to the availability for work, the active search for work, or the refusal to accept work, such individual shall be entitled to payment of Federal supplemental compensation for each week of unemployment which is described in subsection (b) and for which a certification of unemployment is made by such individual in accordance with subsection (c).

''(b) WEEKS FOR WHICH PAYMENT SHALL BE MADE.—A week of unemployment for which payment shall be made under subsection (a) is a week which occurred during the period which commences with the first week beginning after the close of the period described in subsection (a)(2) and ends with the beginning of the first week in which the individual was employed after the close of such period.

''(c) CERTIFICATION.—The certification of unemployment referred to in subsection (a) shall be a certification—

''(1) that is made on a form provided by the State agency concerned and signed by the individual; and

''(2) that identifies the weeks of unemployment for which the individual is making the certification.

''(d) LIMITATION ON AMOUNT OF PAYMENT.—In no case may the total amount paid to an individual under subsection (a) exceed the amount remaining in the account established for such individual under section 602(e) of the Federal Supplemental Compensation Act of 1982 [section 602(e) of Pub. L. 97–248, set out below] after payments were made from such account for weeks of unemployment beginning before the period described in subsection (a)(2).

''(e) DEFINITION.—For purposes of subsection (a), the term 'temporary disaster services' means services performed as a member of the National Guard after being called up by the Governor of a State to perform services related to a major disaster that was declared on June 3, 1985, by the President of the United States under the Disaster Relief Act of 1974 [42 U.S.C. 5121 et seq.].

''(f) MODIFICATION OF AGREEMENT.—(1) The Secretary of Labor shall, at the earliest possible date after the date of the enactment of this Act [Apr. 7, 1986], propose to any State concerned a modification of the agreement that the Secretary has with such State under section 602 of the Federal Supplemental Compensation Act of 1982 [section 602 of Pub. L. 97–248, set out below] in order to carry out this section.

''(2) Pending modification of the agreement, the State may make payment in accordance with the provisions of this section and shall be reimbursed in accordance with the provisions of section 604(a) of the Federal Supplemental Compensation Act of 1982 [section 604(a) of Pub. L. 97–248, set out below]. For purposes of carrying out this paragraph, the term 'this subtitle' in such section 604(a) shall include this section.

''(g) EFFECTIVE DATE.—The provisions of this section shall apply to weeks beginning after March 31, 1985.''

AMORTIZATION PAYMENTS FOR STATES WITH INDEPENDENT RETIREMENT PLANS FROM FUNDS FOR INCREASED COSTS OF ADMINISTRATION OF UNEMPLOYMENT COMPENSATION LAWS; CHANGES IN STATE LAWS; INCREASED CLAIMS; SALARY COSTS

Pub. L. 99–88, title I, § 100, Aug. 15, 1985, 99 Stat. 344, provided that: ''Whenever funds are made available, now or hereafter, in this or any other Act for the administration of unemployment compensation laws to meet increased costs of administration resulting from changes in a State law or increases in the number of unemployment insurance claims filed and claims paid or increased salary costs resulting from changes in State salary compensation plans embracing employees of the State generally over those upon which the State's basic allocation was based, which cannot be provided for by normal budgetary adjustment, amortization payments for States which had independent retirement plans prior to 1980 in their State Employment Security Agencies and States agencies administering the State's unemployment compensation law may be paid from such funds.''

ARRANGEMENTS TO PREVENT PAYMENTS OF UNEMPLOYMENT COMPENSATION TO RETIREES AND PRISONERS

Pub. L. 98–135, title II, § 206, Oct. 24, 1983, 97 Stat. 861, provided that:

''(a) The Secretary of Labor, the Director of the Office of Personnel Management, and the Attorney General are directed to enter into arrangements to make available to the States, computer or other data regarding current and retired Federal employees and Federal prisoners so that States may review the eligibility of these individuals for unemployment compensation, and take action where appropriate.

''(b) The Secretary of Labor shall report to the Congress, prior to January 31, 1984, on arrangements which have been entered into under subsection (a), and any arrangements which could be entered into with other

appropriate State agencies, for the purpose of ensuring that unemployment compensation is not paid to retired individuals or prisoners in violation of law. The report shall include any recommendations for further legislation which might be necessary to aid in preventing such payments.''

SHORT-TIME COMPENSATION

Section 401(b)–(d) of Pub. L. 102–318 provided that:

''(b) ASSISTANCE IN IMPLEMENTING PROGRAMS.—In order to assist States in establishing and implementing short-time compensation programs—

''(1) the Secretary of Labor (hereinafter in this section referred to as the 'Secretary') shall develop model legislative language which may be used by States in developing and enacting short-time compensation programs and shall propose such revisions of such legislative language as may be appropriate, and

''(2) the Secretary shall provide technical assistance and guidance in developing, enacting, and implementing such programs.

The initial model legislative language referred to in paragraph (1) shall be developed not later than January 1, 1993.

''(c) REPORTS.—

''(1) INITIAL REPORT.—Not later than January 1, 1995, the Secretary shall submit to the Congress a report on the implementation of this section. Such report shall include an evaluation of short-time compensation programs and shall contain such recommendations as the Secretary may deem advisable.

''(2) SUBSEQUENT REPORTS.—After the submission of the report under paragraph (1), the Secretary shall submit such additional reports on the implementation of short-time compensation programs as the Secretary deems appropriate.

''(d) DEFINITIONS.—For purposes of this section [amending this section, section 3306 of this title, and section 503 of Title 42, The Public Health and Welfare]—

''(1) SHORT-TIME COMPENSATION PROGRAM.—The term 'short-time compensation program' means a program under which—

''(A) individuals whose workweeks have been reduced by at least 10 percent are eligible for unemployment compensation;

''(B) the amount of unemployment compensation payable to any such individual is a pro rata portion of the unemployment compensation which would be payable to the individual if the individual were totally unemployed;

''(C) eligible employees are not required to meet the availability for work or work search test requirements while collecting short-time compensation benefits, but are required to be available for their normal workweek;

''(D) eligible employees may participate in an employer-sponsored training program to enhance job skills if such program has been approved by the State agency; and

''(E) there is a reduction in the number of hours worked by employees in lieu of imposing temporary layoffs.

''(2) STATE.—The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.''

Section 194 of Pub. L. 97–248 provided that:

''(a) It is the purpose of this section to assist States which provide partial unemployment benefits to individuals whose workweeks are reduced pursuant to an employer plan under which such reductions are made in lieu of temporary layoffs.

''(b)(1) The Secretary of Labor (hereinafter in this section referred to as the 'Secretary') shall develop model legislative language which may be used by States in developing and enacting short-time compensation programs, and shall provide technical assistance to States to assist in developing, enacting, and implementing such short-time compensation program.

''(2) The Secretary shall conduct a study or studies for purposes of evaluating the operation, costs, effect on the State insured rate of unemployment, and other effects of State short-time compensation programs developed pursuant to this section.

''(3) This section shall be a three-year experimental provision, and the provisions of this section regarding guidelines shall terminate 3 years following the date of the enactment of this Act [Sept. 3, 1982].

''(4) States are encouraged to experiment in carrying out the purpose and intent of this section. However, to assure minimum uniformity, States are encouraged to consider requiring the provisions contained in subsections (c) and (d).

''(c) For purposes of this section, the term 'short-time compensation program' means a program under which—

''(1) individuals whose workweeks have been reduced pursuant to a qualified employer plan by at least 10 per centum will be eligible for unemployment compensation;

''(2) the amount of unemployment compensation payable to any such individual shall be a pro rata portion of the unemployment compensation which would be payable to the individual if the individual were totally unemployed;

''(3) eligible employees may be eligible for short-time compensation or regular unemployment compensation, as needed; except that no employee shall be eligible for more than the maximum entitlement during any benefit year to which he or she would have been entitled for total unemployment, and no employee shall be eligible for short-time compensation for more than twenty-six weeks in any twelve-month period; and

''(4) eligible employees will not be expected to meet the availability for work or work search test requirements while collecting short-time compensation benefits, but shall be available for their normal workweek.

''(d) For purposes of subsection (c), the term 'qualified employer plan' means a plan of an employer or of an employers' association which association is party to a collective bargaining agreement (hereinafter referred to as 'employers' association') under which there is a reduction in the number of hours worked by employees rather than temporary layoffs if—

''(1) the employer's or employers' association's short-time compensation plan is approved by the State agency;

''(2) the employer or employers' association certifies to the State agency that the aggregate reduction in work hours pursuant to such plan is in lieu of temporary layoffs which would have affected at least 10 per centum of the employees in the unit or units to which the plan would apply and which would have resulted in an equivalent reduction of work hours;

''(3) during the previous four months the work force in the affected unit or units has not been reduced by temporary layoffs of more than 10 per centum;

''(4) the employer continues to provide health benefits, and retirement benefits under defined benefit pension plans (as defined in section 3(35) of the Employee Requirement Income Security Act of 1974 [29 U.S.C. 1002(35)], to employees whose workweek is reduced under such plan as though their workweek had not been reduced; and

''(5) in the case of employees represented by an exclusive bargaining representative, that representative has consented to the plan.

The State agency shall review at least annually any qualified employer plan put into effect to assure that it continues to meet the requirements of this subsection and of any applicable State law.

''(e) Short-time compensation shall be charged in a manner consistent with the State law.

''(f) For purposes of this section, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

''(g)(1) The Secretary shall conduct a study or studies of State short-time compensation programs consulting with employee and employer representatives in devel-

oping criteria and guidelines to measure the following factors:

''(A) the impact of the program upon the unemployment trust fund, and a comparison with the estimated impact on the fund of layoffs which would have occurred but for the existence of the program;

''(B) the extent to which the program has protected and preserved the jobs of workers, with special emphasis on newly hired employees, minorities, and women;

''(C) the extent to which layoffs occur in the unit subsequent to initiation of the program and the impact of the program upon the entitlement to unemployment compensation of the employees;

''(D) where feasible, the effect of varying methods of administration;

''(E) the effect of short-time compensation on employers' State unemployment tax rates, including both users and nonusers of short-time compensation, on a State-by-State basis;

''(F) the effect of various State laws and practices under those laws on the retirement and health benefits of employees who are on short-time compensation programs;

''(G) a comparison of costs and benefits to employees, employers, and communities from use of short-time compensation and layoffs;

''(H) the cost of administration of the short-time compensation program; and

''(I) such other factors as may be appropriate.

''(2) Not later than October 1, 1985, the Secretary shall submit to the Congress and to the President a final report on the implementation of this section. Such report shall contain an evaluation of short-time compensation programs and shall contain such recommendations as the Secretary deems advisable, including recommendations as to necessary changes in the Statistical practices of the Department of Labor.''

FEDERAL SUPPLEMENTAL COMPENSATION ACT OF 1982

Pub. L. 97–248, title VI, subtitle A (§§ 601–606), Sept. 3, 1982, 96 Stat. 702, as amended by Pub. L. 97–424, title V, § 544(a), (d), Jan. 6, 1983, 96 Stat. 2196; Pub. L. 97–448, title III, § 310(a), Jan. 12, 1983, 96 Stat. 2411; Pub. L. 98–21, title V, §§ 501, 502, 504, 505, Apr. 20, 1983, 97 Stat. 141, 144; Pub. L. 98–92, § 1(a), Sept. 2, 1983, 97 Stat. 608; Pub. L. 98–118, § 1, Oct. 11, 1983, 97 Stat. 803; Pub. L. 98–135, title I, §§ 101, 102, Oct. 24, 1983, 97 Stat. 857; Pub. L. 99–15, § 1(a), (b), Apr. 4, 1985, 99 Stat. 37, known as the ''Federal Supplemental Compensation Act of 1982'', authorized States to enter into and participate in an agreement with the Secretary of Labor providing for States to make payments of Federal supplemental compensation for weeks beginning before Apr. 1, 1985, to eligible individuals who had exhausted their rights or had no right to regular compensation under State law.

MODIFICATION OF AGREEMENTS UNDER FEDERAL SUPPLEMENTAL COMPENSATION ACT OF 1982

Pub. L. 99–15, § 1(c), Apr. 4, 1985, 99 Stat. 37, provided that: ''The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act [Apr. 4, 1985], propose to each State with which he has in effect an agreement under section 602 of the Federal Supplemental Compensation Act of 1982 [section 602 of Pub. L. 97–248, set out above] a modification of such agreement designed to provide for the payment of Federal supplemental compensation under such Act [subtitle A of title VI of Pub. L. 97–248, set out above] in accordance with the amendments made by this Act [amending the Federal Supplemental Compensation Act of 1982]. Notwithstanding any other provision of law, if any State fails or refuses within the three-week period beginning on the date the Secretary of Labor proposes such modification to such State, to enter into such modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before the close of such three-week period. Pending modification (or termination) of the agreement, States may pay Federal supplemental compensation in accordance with the amendments made by this Act for weeks beginning after March 31, 1985, and shall be reimbursed in accordance with the provisions of the Federal Supplemental Compensation Act of 1982.''

APPLICATION OF FEDERAL SUPPLEMENTAL COMPENSATION ACT OF 1982 WITH RESPECT TO WEEKS BEGINNING AFTER MARCH 31, 1983

Pub. L. 98–13, Mar. 29, 1983, 97 Stat. 54, provided: ''That, with respect to weeks beginning after March 31, 1983, the Federal Supplemental Compensation Act of 1982 [subtitle A of title VI of Pub. L. 97–248, set out above] shall be applied as if the provisions contained in part A of title V of the conference report [H. Rept. No. 98–47] on the bill H.R. 1900 [part A (§§ 501–505) of title V of Pub. L. 98–21, Apr. 20, 1983, 97 Stat. 141–144, amending subtitle A of title VI of Pub. L. 97–248, set out above] were enacted into law on the date of the enactment of this Act [Mar. 29, 1983].''

TERMINATION OF FEDERAL-STATE SUPPLEMENTAL UNEMPLOYMENT COMPENSATION AGREEMENTS WITH STATES FAILING TO RENEGOTIATE

Pub. L. 97–424, title V, § 544(c), Jan. 6, 1983, 96 Stat. 2197, provided that: ''The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act [Jan. 6, 1983], propose to each State with which he has in effect an agreement under section 602 of the Tax Equity and Fiscal Responsibility Act of 1982 [section 602 of Pub. L. 97–248, set out above] a modification of such agreement designed to provide for the payment of Federal supplemental compensation under such Act [sections 601 to 606 of Pub. L. 97–248, set out above] in accordance with the amendments made by this Act [amending section 602(e) of Pub. L. 97–248, set out above]. Notwithstanding any other provision of law, if any State fails or refuses, within the three-week period beginning on the date the Secretary of Labor proposes such a modification to such State, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before such three-week period.''

CERTIFICATION OF STATE UNEMPLOYMENT LAWS; EFFECTIVE DATES

Section 2408(b) of Pub. L. 97–35, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Except as otherwise provided in paragraph (2)—

''(A) The amendments made by sections 2401 and 2402 [amending Pub. L. 91–373, set out below] shall be required to be included in State unemployment compensation laws for purposes of certifications under section 3304(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on October 31 of any taxable year after 1980; and

''(B) the amendments made by sections 2403 and 2404 [amending Pub. L. 91–373, set out below] shall be required to be included in such laws for purposes of such certifications on October 31 of any taxable year after 1981.

''(2)(A) In the case of any State the legislature of which—

''(i) does not meet in a session which begins after the date of the enactment of this Act [Aug. 13, 1981] and prior to September 1, 1981, and

''(ii) if in session on the date of the enactment of this Act, does not remain in session for a period of at least 25 calendar days,

the date '1980' in paragraph (1)(A) shall be deemed to be '1981'.

''(B) In the case of any State the legislature of which—

''(i) does not meet in a session which begins after the date of the enactment of this Act [Aug. 13, 1981] and prior to September 1, 1982, and

''(ii) if in session on the date of the enactment of this Act, does not remain in session for a period of at least 25 calendar days,

the date '1981' in paragraph (1)(B) shall be deemed to be '1982'.''

Pub. L. 96–499, title X, § 1025, Dec. 5, 1980, 94 Stat. 2660, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''On October 31 of any taxable year after 1980, the Secretary of Labor shall not certify any State, as provided in section 3304(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], which, after reasonable notice and opportunity for a hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by reason of the enactment of the preceding provisions of this subtitle [subtitle C of title X of Pub. L. 96–499, Dec. 5, 1980, 94 Stat. 2656, which enacted section 8509 of Title 5, Government Organization and Employees, and section 1109 of Title 42, The Public Health and Welfare, enacted provisions set out as notes under this section and section 8509 of Title 5, and amended provisions set out as notes under this section] to be included therein, or has with respect to the 12-month period ending on such October 31, failed to comply substantially with any such provision.''

TRANSFER OF FUNDS TO FEDERAL UNEMPLOYMENT TRUST FUND AS PREREQUISITE TO APPROVAL OF VIRGIN ISLANDS UNEMPLOYMENT COMPENSATION LAW

Section 116(g) of Pub. L. 94–566, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The Secretary of Labor shall not approve an unemployment compensation law of the Virgin Islands under section 3304(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] until the Governor of the Virgin Islands has approved the transfer to the Federal Unemployment Trust Fund established by section 904 of the Social Security Act [42 U.S.C. 1104] of an amount equal to the dollar balance credited to the unemployment subfund of the Virgin Islands established under section 310 of title 24 of the Virgin Islands Code.''

FEDERAL REIMBURSEMENT FOR BENEFITS PAID TO NEWLY COVERED WORKERS DURING TRANSITION PERIOD

Pub. L. 94–566, title I, § 121, Oct. 20, 1976, 90 Stat. 2673, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided for payment of compensation for any week of unemployment beginning on or after Jan. 1, 1978, for services not covered by State unemployment compensation law during 1-year period ending Dec. 31, 1975, with the Secretary of Labor to pay to the unemployment fund of such State an amount equal to the Federal reimbursement.

EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1974

Pub. L. 93–572, §§ 101–105, Dec. 31, 1974, 88 Stat. 1869–1872, as amended by Pub. L. 94–12, title VII, § 701(a), Mar. 29, 1975, 89 Stat. 65; Pub. L. 94–45, title I, §§ 101(a)–(f), 102(a), 103(a), 106, June 30, 1975, 89 Stat. 236–239; Pub. L. 94–566, title I, § 116(d)(3), Oct. 20, 1976, 90 Stat. 2672; Pub. L. 95–19, title I, §§ 101(a), 102(a)–(c), 103(a), 104(a), 105(a), 107(a), Apr. 12, 1977, 91 Stat. 39–42; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, known as the ''Emergency Unemployment Compensation Act of 1974'', provided that, for weeks ending before Jan. 31, 1978, qualified States could enter into agreements with the Secretary of Labor for the payment of emergency unemployment compensation to eligible individuals who had exhausted their rights to regular compensation under State law.

MODIFICATION OF AGREEMENTS WITH STATES TO REFLECT AMENDMENTS UNDER EMERGENCY UNEMPLOYMENT COMPENSATION EXTENSION ACT OF 1977

Section 106 of Pub. L. 95–19 provided that: ''The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act [Apr. 12, 1977], propose to each State with which he has in effect an agreement under section 102 of the Emergency Compensation Act of 1974 [Pub. L. 93–572, set out above] a modification of such agreement designed to provide for the payment of emergency compensation under such Act in accordance with the amendments made by this title [enacting sections 102(h) and 105(b) of the Emergency Unemployment Compensation Act of 1974, amending sections 102(b)(2), (c)(3)(A)(ii), (e), (f)(2), 104(b), and 105(a) of that Act, and enacting provisions set out as notes under this section]. Notwithstanding any other provision of law, if any State fails or refuses, within the 3-week period beginning on the date the Secretary of Labor proposes such a modification of such State, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before the last day of such 3-week period.''

MODIFICATION OF AGREEMENTS WITH STATES TO REFLECT AMENDMENTS UNDER UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1976

Section 604 of Pub. L. 94–566 provided that: ''The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act [Oct. 20, 1976], propose to each State with which he has in effect an agreement under section 202 of the Emergency Jobs and Unemployment Assistance Act of 1974 [Pub. L. 93–567, title II, § 202, set out below] a modification of such agreement designed to provide for the payment of special unemployment assistance under such Act in accordance with the amendments made by sections 601, 602, and 603 of this title [set out as a Special Unemployment Assistance Programs note below]. Notwithstanding any other provision of law, if any State fails or refuses, within the three-week period beginning on the date the Secretary of Labor proposes such a modification to such State, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before the last day of such three-week period.''

AGREEMENTS UNDER EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1974 TO BE MODIFIED TO REFLECT AMENDMENT OF THE ACT BY EMERGENCY COMPENSATION AND SPECIAL UNEMPLOYMENT ASSISTANCE EXTENSION ACT OF 1975

Section 105 of Pub. L. 94–45, June 30, 1975, 89 Stat. 239, provided that: ''The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act [June 30, 1975], propose to each State with which he has in effect an agreement under section 102 of the Emergency Unemployment Compensation Act of 1974 [Pub. L. 93–567, set out below] a modification of such agreement designed to provide for the payment of the emergency compensation benefits allowable under such Act by reason of the amendments made by this part. Notwithstanding any provision of the Emergency Unemployment Compensation Act of 1974, if any State fails or refuses, within the three-week period beginning on the date of the enactment of this Act, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement.''

AGREEMENTS UNDER EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1974 TO BE MODIFIED TO REFLECT AMENDMENT OF THE ACT BY TAX REDUCTION ACT OF 1975

Pub. L. 94–12, title VII, § 701(b), Mar. 29, 1975, 89 Stat. 66, provided that: ''The Secretary of Labor shall, at the earliest practicable date after the enactment of this Act [Mar. 29, 1975], propose to each State with which he has in effect an agreement entered into pursuant to section 102 of the Emergency Unemployment Compensation Act of 1974 [Pub. L. 93–572, set out above] a modification of such agreement designed to cause payments of emergency compensation thereunder to be made in the manner prescribed by such Act, as amend-

ed by subsection (a) of this section [amending section 102(e) of the Emergency Unemployment Compensation Act of 1974]. Notwithstanding any provision of the Emergency Unemployment Compensation Act of 1974, if any such State shall fail or refuse, within a reasonable time after the date of the enactment of this Act, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement.''

NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

Section 411 of Pub. L. 94–566, as amended by Pub. L. 95–19, title III, § 303, Apr. 12, 1977, 91 Stat. 45; Pub. L. 96–84, §§ 1(a), (b), 2, 3(a), Oct. 10, 1979, 93 Stat. 653, 654, related to establishment, membership, powers, duties, etc., of the National Commission on Unemployment Compensation, and required a final report not later than July 1, 1980, respecting findings, conclusions, and recommendations, with termination of the Commission on the ninetieth day after the date of submission of the final report to the President.

SPECIAL UNEMPLOYMENT ASSISTANCE PROGRAMS

Pub. L. 93–567, title II, §§ 201–224, Dec. 31, 1974, 88 Stat. 1850–1853, as amended by Pub. L. 94–45, title II, §§ 201–203, June 30, 1975, 89 Stat. 240–242; Pub. L. 94–444, § 6(a), (b), Oct. 1, 1976, 90 Stat. 1481; Pub. L. 94–566, title VI, §§ 601(a), 602(a)–(d), 603(a), Oct. 20, 1976, 90 Stat. 2689–2691; Pub. L. 96–499, title X, § 1021, Dec. 5, 1980, 94 Stat. 2656; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(21), (f)(15)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–422, 2681–431, established, with respect to weeks of unemployment ending before June 30, 1978, temporary Federal program of special unemployment assistance for workers who were unemployed during period of aggravated unemployment and who were not otherwise eligible for unemployment allowances under any other law, and provided for Federal reimbursement for unemployment benefits paid on basis of public service employment for services performed in weeks before Dec. 5, 1980.

AGREEMENTS UNDER SPECIAL UNEMPLOYMENT ASSISTANCE PROGRAM TO BE MODIFIED TO REFLECT AMENDMENT OF PROGRAM BY EMERGENCY COMPENSATION AND SPECIAL UNEMPLOYMENT ASSISTANCE EXTENSION ACT OF 1975

Section 204(a) of Pub. L. 94–45, June 30, 1975, 89 Stat. 242, provided that: ''The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act [June 30, 1975], propose to each State with which he has in effect an agreement under section 202 of the Emergency Jobs and Unemployment Assistance Act of 1974 [Pub. L. 93–567, title II, set out above] a modification of such agreement designed to provide for the payment of the special unemployment assistance allowable under such Act by reason of the amendments made by section 201 [amending sections 206 and 208 of the Emergency Jobs and Unemployment Assistance Act of 1974]. Notwithstanding any other provision of law, if any State fails or refuses, within the three-week period beginning on the date of the enactment of this Act [June 30, 1975], to enter into such a modification of any such agreement, the Secretary of Labor shall terminate such agreement.''

SPECIAL UNEMPLOYMENT ASSISTANCE PROGRAMS; INDIVIDUALS PERFORMING SERVICES FOR EDUCATIONAL INSTITUTIONS OR AGENCIES

Pub. L. 94–32, title I, § 101, June 12, 1975, 89 Stat. 178, provided in part that: ''Funds appropriated by this Act [Second Supplemental Appropriations Act, 1975], or any other Act, for the payments of special unemployment assistance under title II of the Emergency Jobs and Unemployment Assistance Act of 1974 [Pub. L. 93–567, title II, set out above] shall not be used for making such payments of assistance or waiting period credit, beginning after the date of enactment of this Act [June 12, 1975], to any individual who performs services in an instructional, research, or principal administrative capacity for an educational institution or agency with respect to any week commencing during the period between two successive academic years (or, when the contract provides instead for a similar period between two regular but not successive terms, during such similar period) if—

''(1) such individual performed services in any such capacity for any educational institution or agency for the first of such academic years or terms; and

''(2) such individual has a contract to perform services in any such capacity for any educational institution or agency for the latter of such academic years or terms.''

EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1971

Pub. L. 92–224, title II, §§ 201–206, Dec. 29, 1971, 85 Stat. 811–814, as amended by Pub. L. 92–329, §§ 1, 2(e), June 30, 1972, 86 Stat. 398; Pub. L. 93–368, § 4(a), Aug. 7, 1974, 88 Stat. 420; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, known as the ''Emergency Unemployment Compensation Act of 1971'', provided that, for weeks ending before Mar. 31, 1973, qualified States could enter into agreements with the Secretary of Labor for the payment of emergency unemployment compensation to eligible individuals who had exhausted their rights to regular compensation under State law.

FEDERAL-STATE EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 1970

Pub. L. 91–373, title II, §§ 201–207, Aug. 10, 1970, 84 Stat. 708–712, as amended by Pub. L. 92–599, title V, § 501, Oct. 27, 1972, 86 Stat. 1326; Pub. L. 93–53, § 5, July 1, 1973, 87 Stat. 137; Pub. L. 93–233, § 20, Dec. 31, 1973, 87 Stat. 974; Pub. L. 93–256, § 2, Mar. 28, 1974, 88 Stat. 53; Pub. L. 93–329, § 2, June 30, 1974, 88 Stat. 288; Pub. L. 93–368, § 3, Aug. 7, 1974, 88 Stat. 420; Pub. L. 93–572, §§ 106–108, Dec. 31, 1974, 88 Stat. 1872; Pub. L. 94–45, title I, § 102(b), June 30, 1975, 89 Stat. 238; Pub. L. 94–566, title I, § 116(d)(1), (2), title II, § 212(a), title III, § 311(a), (b), Oct. 20, 1976, 90 Stat. 2672, 2677, 2678; Pub. L. 96–364, title IV, § 416(a), Sept. 26, 1980, 94 Stat. 1310; Pub. L. 96–499, title X, §§ 1022(a), 1024(a), Dec. 5, 1980, 94 Stat. 2656, 2658; Pub. L. 97–35, title XXIV, §§ 2401(a), (b), 2402(a), 2403(a), 2404(a), (b), title XXV, § 2505(b), Aug. 13, 1981, 95 Stat. 874, 875, 876, 884; Pub. L. 97–248, title I, § 191(a), Sept. 3, 1982, 96 Stat. 407; Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, 1081; Pub. L. 98–21, title V, § 522(a), Apr. 20, 1983, 97 Stat. 148; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–318, title II, §§ 201, 202(a)(1), (b)(1), July 3, 1992, 106 Stat. 295, 296; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 111–312, title V, § 502, Dec. 17, 2010, 124 Stat. 3307, provided:

''SEC. 201. [Short Title] This title may be cited as the 'Federal-State Extended Unemployment Compensation Act of 1970'.

''SEC. 202. [Payment of Extended Compensation]

''(a) [State Law Requirements] (1) For purposes of section 3304(a)(11) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], a State law shall provide the payment of extended compensation shall be made, for any week of unemployment which begins in the individual's eligibility period, to individuals who have exhausted all rights to regular compensation under the State law and who have no rights to regular compensation with respect to such week under such law or any other State unemployment compensation law or to compensation under any other Federal law and are not receiving compensation with respect to such week under the unemployment compensation law of Canada. For purposes of the preceding sentence, an individual shall have exhausted his rights to regular compensation under a State law (A) when no payments of regular compensation can be made under such law because such individual has received all regular compensation available to him based on employment or wages during his base period, or (B) when his rights to such compensation have terminated by reason of the expiration of the benefit year with respect to which such rights existed.

''(2) Except where inconsistent with the provisions of this title, the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall apply to claims for extended compensation and to the payment thereof.

''(3)(A) Notwithstanding the provisions of paragraph (2), payment of extended compensation under this Act [see Short Title of 1970 Amendment note set out under section 3311 of this title] shall not be made to any individual for any week of unemployment in his eligibility period—

''(i) during which he fails to accept any offer of suitable work (as defined in subparagraph (c) [probably means subpar. (C)]) or fails to apply for any suitable work to which he was referred by the State agency; or

''(ii) during which he fails to actively engage in seeking work, unless such individual is not actively engaged in seeking work because such individual is, as determined in accordance with State law—

''(I) before any court of the United States or any State pursuant to a lawfully issued summons to appear for jury duty (as such term may be defined by the Secretary of Labor), or

''(II) hospitalized for treatment of an emergency or a life-threatening condition (as such term may be defined by such Secretary),

if such exemptions in clauses (I) and (II) apply to recipients of regular benefits, and the State chooses to apply such exemptions for recipients of extended benefits.

''(B) If any individual is ineligible for extended compensation for any week by reason of a failure described in clause (i) or (ii) of subparagraph (A), the individual shall be ineligible to receive extended compensation for any week which begins during a period which—

''(i) begins with the week following the week in which such failure occurs, and

''(ii) does not end until such individual has been employed during at least 4 weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of 4 multiplied by the individual's average weekly benefit amount (as determined for purposes of subsection (b)(1)(c) [probably means subsec. (b)(1)(C)]) for his benefit year.

''(C) For purposes of this paragraph, the term 'suitable work' means, with respect to any individual, any work which is within such individual's capabilities; except that, if the individual furnishes evidence satisfactory to the State agency that such individual's prospects for obtaining work in his customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with the applicable State law.

''(D) Extended compensation shall not be denied under clause (i) of subparagraph (A) to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work—

''(i) if the gross average weekly remuneration payable to such individual for the position does not exceed the sum of—

''(I) the individual's average weekly benefit amount (as determined for purposes of subsection (b)(1)(C)) for his benefit year, plus

''(II) the amount (if any) of supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1986) payable to such individual for such week;

''(ii) if the position was not offered to such individual in writing and was not listed with the State employment service;

''(iii) if such failure would not result in a denial of compensation under the provisions of the applicable State law to the extent that such provisions are not inconsistent with the provisions of subparagraphs (C) and (E); or

''(iv) if the position pays wages less than the higher of—

''(I) the minimum wage provided by section 6(a)(1) of the Fair Labor Standards Act of 1938 [29 U.S.C. 206(a)(1)], without regard to any exemption; or

''(II) any applicable State or local minimum wage.

''(E) For purposes of this paragraph, an individual shall be treated as actively engaged in seeking work during any week if—

''(i) the individual has engaged in a systematic and sustained effort to obtain work during such week, and

''(ii) the individual provides tangible evidence to the State agency that he has engaged in such an effort during such week.

''(F) For purposes of section 3304(a)(11) of the Internal Revenue Code of 1986, a State law shall provide for referring applicants for benefits under this Act [see Short Title of 1970 Amendment note set out under section 3311 of this title] to any suitable work to which clauses (i), (ii), (iii), and (iv) of subparagraph (D) would not apply.

''(4) No provision of State law which terminates a disqualification for voluntarily leaving employment, being discharged for misconduct, or refusing suitable employment shall apply for purposes of determining eligibility for extended compensation unless such termination is based upon employment subsequent to the date of such disqualification.

''(5) Notwithstanding the provisions of paragraph (2), an individual shall not be eligible for extended compensation unless, in the base period with respect to which the individual exhausted all rights to regular compensation under the State law, the individual had 20 weeks of full-time insured employment, or the equivalent in insured wages. For purposes of this paragraph, the equivalent in insured wages shall be earnings covered by the State law for compensation purposes which exceed 40 times the individual's most recent weekly benefit amount or 1½ times the individual's insured wages in that calendar quarter of the base period in which the individual's insured wages were the highest (or one such quarter if his wages were the same for more than one such quarter). The State shall by law provide which one or more of the foregoing methods of measuring employment and earnings shall be used in that State.

''(6) No payment shall be made under this Act [see Short Title of 1970 Amendment note set out under section 3311 of this title] to any State in respect of any extended compensation or sharable regular compensation paid to any individual for any week if, under the rules of paragraphs (3), (4), and (5), extended compensation would not have been payable to such individual for such week.

''(7) Paragraphs (3) and (4) shall not apply to weeks of unemployment beginning after March 6, 1993, and before January 1, 1995, and no provision of State law in conformity with such paragraphs shall apply during such period.

''(b) [Individual's Compensation Accounts] (1) The State law shall provide that the State will establish, for each eligible individual who files an application therefor, an extended compensation account with respect to such individual's benefit year. The amount established in such account shall be not less than whichever of the following is the least:

''(A) 50 per centum of the total amount of regular compensation (including dependents' allowances) payable to him during such benefit year under such law,

''(B) thirteen times his average weekly benefit amount, or

''(C) thirty-nine times his average weekly benefit amount, reduced by the regular compensation paid (or deemed paid) to him during such benefit year under such law;

except that the amount so determined shall (if the State law so provides) be reduced by the aggregate amount of additional compensation paid (or deemed paid) to him under such law for prior weeks of unemployment in such benefit year which did not begin in an extended benefit period.

''(2) For purposes of paragraph (1), an individual's weekly benefit amount for a week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

''(3)(A) Effective with respect to weeks beginning in a high unemployment period, paragraph (1) shall be applied by substituting—

''(i) '80 per centum' for '50 per centum' in subparagraph (A),

''(ii) 'twenty' for 'thirteen' in subparagraph (B), and

''(iii) 'forty-six' for 'thirty-nine' in subparagraph (C).

''(B) For purposes of subparagraph (A), the term 'high unemployment period' means any period during which an extended benefit period would be in effect if section 203(f)(1)(A)(i) were applied by substituting '8 percent' for '6.5 percent'.

''(c) [Cessation of Extended Benefits When Paid Under an Interstate Claim in a State Where Extended Benefit Period Is Not in Effect] (1) Except as provided in paragraph (2), payment of extended compensation shall not be made to any individual for any week if—

''(A) extended compensation would (but for this subsection) have been payable for such week pursuant to an interstate claim filed in any State under the interstate benefit payment plan, and

''(B) an extended benefit period is not in effect for such week in such State.

''(2) Paragraph (1) shall not apply with respect to the first 2 weeks for which extended compensation is payable (determined without regard to this subsection) pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended compensation account established for the benefit year.

''(3) Section 3304(a)(9)(A) of the Internal Revenue Code of 1986 shall not apply to any denial of compensation required under this subsection.

''SEC. 203. [Extended Benefit Period]

''(a) [Beginning and Ending] For purposes of this title, in the case of any State, an extended benefit period—

''(1) shall begin with the third week after the first week for which there is a State 'on' indicator; and

''(2) shall end with the third week after the first week for which there is a State 'off' indicator.

''(b) [Special Rules] (1) In the case of any State—

''(A) no extended benefit period shall last for a period of less than thirteen consecutive weeks, and

''(B) no extended benefit period may begin before the fourteenth week after the close of a prior extended benefit period with respect to such State.

''(2) When a determination has been made that an extended benefit period is beginning or ending with respect to a State, the Secretary shall cause notice of such determination to be published in the Federal Register.

''(c) [Eligibility Period] For purposes of this title, an individual's eligibility period under the State law shall consist of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such extended benefit period.

''(d) [State 'On' and 'Off' Indicators] For purposes of this section—

''(1) There is a State 'on' indicator for a week if the rate of insured unemployment under the State law for the period consisting of such week and the immediately preceding twelve weeks—

''(A) equaled or exceeded 120 per centum of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

''(B) equaled or exceeded 5 per centum.

''(2) There is a State 'off' indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, either subparagraph (A) or subparagraph (B) of paragraph (1) is not satisfied.

Effective with respect to compensation for weeks of unemployment beginning after March 30, 1977 (or, if later, the date established pursuant to State law), the State may by law provide that the determination of whether there has been a State 'on' or 'off' indicator beginning or ending any extended benefit period shall be made under this subsection as if (i) paragraph (1) did not contain subparagraph (A) thereof, and (ii) the figure '5' contained in subparagraph (B) thereof were '6'; except that, notwithstanding any such provision of State law, any week for which there would otherwise be a State 'on' indicator shall continue to be such a week and shall not be determined to be a week for which there is a State 'off' indicator. Effective with respect to compensation for weeks of unemployment beginning after the date of enactment of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 [Dec. 17, 2010] (or, if later, the date established pursuant to State law), and ending on or before December 31, 2011, the State may by law provide that the determination of whether there has been a state [State] 'on' or 'off' indicator beginning or ending any extended benefit period shall be made under this subsection as if the word 'two' were 'three' in subparagraph (1)(A). For purposes of this subsection, the rate of insured unemployment for any thirteen-week period shall be determined by reference to the average monthly covered employment under the State law for the first four of the most recent six calendar quarters ending before the close of such period.

''(e) [Rate of Insured Unemployment; Covered Employment] (1) For purposes of subsection (d), the term 'rate of insured unemployment' means the percentage arrived at by dividing—

''(A) the average weekly number of individuals filing claims for regular compensation for weeks of unemployment with respect to the specified period, as determined on the basis of the reports made by the State agency to the Secretary, by

''(B) the average monthly covered employment for the specified period.

''(2) Determinations under subsection (d) shall be made by the State agency in accordance with regulations prescribed by the Secretary.

''(f) [Alternative Trigger] (1) Effective with respect to compensation for weeks of unemployment beginning after March 6, 1993, the State may by law provide that for purposes of beginning or ending any extended benefit period under this section—

''(A) there is a State 'on' indicator for a week if—

''(i) the average rate of total unemployment in such State (seasonally adjusted) for the period consisting of the most recent 3 months for which data for all States are published before the close of such week equals or exceeds 6.5 percent, and

''(ii) the average rate of total unemployment in such State (seasonally adjusted) for the 3-month period referred to in clause (i) equals or exceeds 110 percent of such average rate for either (or both) of the corresponding 3-month periods ending in the 2 preceding calendar years; and

''(B) there is a State 'off' indicator for a week if either the requirements of clause (i) or clause (ii) of subparagraph (A) are not satisfied.

Notwithstanding the provision of any State law described in this paragraph, any week for which there would otherwise be a State 'on' indicator shall continue to be such a week and shall not be determined to be a week for which there is a State 'off' indicator.

''(2) Effective with respect to compensation for weeks of unemployment beginning after the date of enactment of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 [Dec. 17, 2010] (or, if later, the date established pursuant to State law), and ending on or before December 31, 2011, the State may by law provide that the determination of whether there has been a state [State] 'on' or 'off' indicator beginning or ending any extended benefit period shall be made under this subsection as if the word 'either' were 'any', the word 'both' were 'all', and the figure '2' were '3' in clause (1)(A)(ii).

''(3) For purposes of this subsection, determinations of the rate of total unemployment in any State for any period (and of any seasonal adjustment) shall be made by the Secretary.

''SEC. 204. [Payments to States]

''(a) [Amount Payable] (1) There shall be paid to each State an amount equal to one-half of the sum of—

''(A) the sharable extended compensation, and

''(B) the sharable regular compensation,

paid to individuals under the State law.

''(2) No payment shall be made to any State under this subsection in respect of compensation (A) for which the State is entitled to reimbursement under the provisions of any Federal law other than this Act, (B) paid for the first week in an individual's eligibility period for which extended compensation or sharable regular compensation is paid, if the State law of such State provides for payment (at any time or under any circumstances) of regular compensation to an individual for his first week of otherwise compensable unemployment, (C) paid for any week with respect to which such benefits are not payable by reason of section 233(d) [now 233(c)] of the Trade Act of 1974 [19 U.S.C. 2293(c)], or (D) paid to an individual with respect to a week of unemployment to the extent that such amount exceeds the amount of such compensation which would be paid to such individual if such State had a benefit structure which provided that the amount of compensation otherwise payable to any individual for any week shall be rounded (if not a full dollar amount) to the nearest lower full dollar amount.

''(3) The amount which, but for this paragraph, would be payable under this subsection to any State in respect of any compensation paid to an individual whose base period wages include wages for services to which section 3306(c)(7) of the Internal Revenue Code of 1986 applies shall be reduced by an amount which bears the same ratio to the amount which, but for this paragraph, would be payable under this subsection to such State in respect of such compensation as the amount of the base period wages attributable to such services bears to the total amount of the base period wages.

''(b) [Sharable Extended Compensation] For purposes of subsection (a)(1)(A), extended compensation paid to an individual for weeks of unemployment in such individual's eligibility period is sharable extended compensation to the extent that the aggregate extended compensation paid to such individual with respect to any benefit year does not exceed the smallest of the amounts referred to in subparagraphs (A), (B), and (C) of section 202(b)(1).

''(c) [Sharable Regular Compensation] For purposes of subsection (a)(1)(B), regular compensation paid to an individual for a week of unemployment is sharable regular compensation—

''(1) if such week is in such individual's eligibility period (determined under section 203(c)), and

''(2) to the extent that the sum of such compensation, plus the regular compensation paid (or deemed paid) to him with respect to prior weeks of unemployment in the benefit year, exceeds twenty-six times (and does not exceed thirty-nine, forty-six in any case where section 202(b)(3)(A) applies[,] times) the average weekly benefit amount (including allowances for dependents) for weeks of total unemployment payable to such individual under the State law in such benefit year.

''(d) [Payment on Calendar Month Basis] There shall be paid to each State either in advance or by way of reimbursement, as may be determined by the Secretary, such sum as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any sum by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made upon the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency.

''(e) [Certification] The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section. The Secretary of the Treasury, prior to audit or settlement by the Government Accountability Office, shall make payment to the State in accordance with such certification, by transfers from the extended unemployment compensation account to the account of such State in the Unemployment Trust Fund.

''SEC. 205. [Definitions] For purposes of this title—

''(1) The term 'compensation' means cash benefits payable to individuals with respect to their unemployment.

''(2) The term 'regular compensation' means compensation payable to an individual under any State unemployment compensation law (including compensation payable pursuant to 5 U.S.C. chapter 85), other than extended compensation and additional compensation.

''(3) The term 'extended compensation' means compensation (including additional compensation and compensation payable pursuant to 5 U.S.C. chapter 85) payable for weeks of unemployment beginning in an extended benefit period to an individual under those provisions of the State law which satisfy the requirements of this title with respect to the payment of extended compensation.

''(4) The term 'additional compensation' means compensation payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

''(5) The term 'benefit year' means the benefit year as defined in the applicable State law.

''(6) The term 'base period' means the base period as determined under applicable State law for the benefit year.

''(7) The term 'Secretary' means the Secretary of Labor of the United States.

''(8) The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

''(9) The term 'State agency' means the agency of the State which administers its State law.

''(10) The term 'State law' means the unemployment compensation law of the State, approved by the Secretary under section 3304 of the Internal Revenue Code of 1986.

''(11) The term 'week' means a week as defined in the applicable State law.

''SEC. 206. [Approval of State Laws] [This section amended section 3304(a) of the Internal Revenue Code by adding par. (11) thereof.]

''SEC. 207. [Effective Dates] (a) Except as provided in subsection (b)—

''(1) in applying section 203, no extended benefit period may begin with a week beginning before January 1, 1972; and

''(2) section 204 shall apply only with respect to weeks of unemployment beginning after December 31, 1971.

''(b)(1) In the case of a State law approved under section 3304(a)(11) of the Internal Revenue Code of 1986, such State law may also provide that an extended benefit period may begin with a week established pursuant to such law which begins earlier than January 1, 1972, but not earlier than 60 days after the date of the enactment of this Act [Aug. 10, 1970].

''(2) For purposes of paragraph (1) with respect to weeks beginning before January 1, 1972, the extended benefit period for the State shall be determined under section 203(a) solely by reference to the State 'on' indicator and the State 'off' indicator.

''(3) In the case of a State law containing a provision described in paragraph (1), section 204 shall also apply with respect to weeks of unemployment in extended benefit periods determined pursuant to paragraph (1).

''(c) Section 3304(a)(11) of the Internal Revenue Code of 1986 (as added by section 206) shall not be a requirement for the State law of any State—

''(1) in the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1971, with respect to any

week of unemployment which begins prior to July 1, 1972; or

''(2) in the case of any other State, with respect to any week of unemployment which begins prior to January 1, 1972.''

[Pub. L. 102–318, title II, § 202(a)(2), July 3, 1992, 106 Stat. 296, provided that:

[''(A) IN GENERAL.—Notwithstanding any other provision of law, the amendment made by paragraph (1) [amending section 202(a)(5) of Pub. L. 91–373, set out above] shall apply for purposes of extended unemployment compensation and emergency unemployment compensation to weeks of unemployment beginning on or after the date of the enactment of this Act [July 3, 1992].

[''(B) WAIVER OF RECOVERY OF CERTAIN OVERPAYMENTS.—On and after the date of the enactment of this Act, no repayment of any emergency unemployment compensation shall be required under section 105 of the Emergency Unemployment Compensation Act of 1991 (Public Law 102–164, as amended [formerly set out above]) if the individual would have been entitled to receive such compensation had the amendment made by paragraph (1) applied to all weeks beginning before the date of the enactment of this Act.'']

[Section 522(b) of Pub. L. 98–21 provided that: ''The amendment made by this section [amending section 202(a)(3)(A)(ii) of Pub. L. 91–373, set out above] shall become effective on the date of the enactment of this Act [Apr. 20, 1983].'']

[Section 191(b) of Pub. L. 97–248 provided that:

[''(1) Except as provided in paragraph (2), the amendments made by this section [amending section 204(a)(2) of Pub. L. 91–373, set out above] shall apply in the case of compensation paid to individuals during eligibility periods beginning on or after October 1, 1983.

[''(2) In the case of a State with respect to which the Secretary of Labor has determined that State legislation is required in order to provide for rounding down of unemployment compensation amounts, the amendment made by this section [amending section 204(a)(2) of Pub. L. 91–373, set out above] shall apply in the case of compensation paid to individuals during eligibility periods which begin on or after October 1, 1983, and after the end of the first session of the State legislature which begins after the date of the enactment of this Act [Sept. 3, 1982], or which began prior to the date of the enactment of this Act and remained in session for at least twenty-five calendar days after such date of enactment. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature.'']

[Section 2401(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending sections 203 and 204(a)(3), (4) of Pub. L. 91–373, set out above] shall apply to weeks beginning after the date of the enactment of this Act [Aug. 13, 1981].'']

[Section 2402(b) of Pub. L. 97–35 provided that: ''The amendment made by subsection (a) [amending section 203(e)(1)(A) of Pub. L. 91–373, set out above] shall apply for purposes of determining whether there are State 'on' or 'off' indicators for weeks beginning after the date of the enactment of this Act [Aug. 13, 1981]. For purposes of making such determinations for such weeks, such amendment shall be deemed to be in effect for all weeks whether beginning before, on, or after such date of enactment.'']

[Section 2403(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending section 203(d) of Pub. L. 91–373, set out above] shall apply to weeks beginning after September 25, 1982.'']

[Section 2404(c) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending section 202(a)(5), (6) of Pub. L. 91–373, set out above] shall apply with respect to extended compensation and sharable regular compensation payable for weeks which begin after September 25, 1982.'']

[Amendment by sections 2401–2404 of Pub. L. 97–35 (amending Pub. L. 91–373, set out above) required to be included in State unemployment compensation laws for purposes of certifications, see section 2408(b) of Pub. L. 97–35, set out above.]

[Amendment by section 2505(b) of Pub. L. 97–35 (amending section 204(a)(2)(C) of Pub. L. 91–373, set out above) applicable to allowances payable for weeks of unemployment which begin after Sept. 30, 1981, and transitional provisions applicable, see section 2514 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment and Transitional Provisions note under section 2291 of Title 19, Customs Duties.]

[Section 1022(b) of Pub. L. 96–499 provided that:

[''(1) Except as provided in paragraph (2), the amendments made by this section [amending section 204(a)(2) of Pub. L. 91–373, set out above] shall apply in the case of compensation paid to individuals during eligibility periods beginning on or after the date of the enactment of this Act [Dec. 5, 1980].

[''(2) In the case of a State with respect to which the Secretary of Labor has determined that State legislation is required in order to eliminate its current policy of paying regular compensation to an individual for his first week of otherwise compensable unemployment, the amendments made by this section [amending section 204(a)(2) of Pub. L. 91–373, set out above] shall apply in the case of compensation paid to individuals during eligibility periods beginning after the end of the first regularly scheduled session of the State legislature ending more than thirty days after the date of the enactment of this Act [Dec. 5, 1980].'']

[Section 1024(b) of Pub. L. 96–499 provided that: ''The amendment made by this section [amending section 202(a) of Pub. L. 91–373, set out above] shall apply with respect to weeks of unemployment beginning after March 31, 1981.'']

[Section 416(b) of Pub. L. 96–364, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

[''(1) IN GENERAL.—The amendment made by subsection (a) [amending subsec. 202(c) of Pub. L. 91–373, set out above] shall apply to weeks of unemployment beginning after October 1, 1980; except that such amendment shall not be a requirement of any State law under section 3304(a)(11) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for any week which begins before June 1, 1981.

[''(2) SPECIAL RULE FOR CERTAIN STATES.—In the case of any State the legislature of which does not meet in a regular session which begins during calendar year 1981 and before April 1, 1981, paragraph (1) shall be applied by substituting 'June 1, 1982' for 'June 1, 1981'.'']

[Section 116(f)(1) of Pub. L. 94–566, set out as an Effective Date of 1976 Amendment note above, provided in part that the deletion of ''the Virgin Islands or'' from section 202(a)(1) of Pub. L. 91–373, set out above, and the insertion of ''and the Virgin Islands'' in section 205(8) thereof shall take effect on the later of Oct. 1, 1976, or the day after the day on which the Secretary of Labor approves under section 3304(a) of this title an unemployment compensation law submitted to him by the Virgin Islands for approval.]

[Section 212(b) of Pub. L. 94–566 provided that: ''The amendment made by this section [enacting section 204(a)(4) of Pub. L. 91–373, set out above] shall apply with respect to compensation paid for weeks of unemployment beginning on or after January 1, 1979.'']

[Section 311(c) of Pub. L. 94–566 provided that: ''The amendment made by subsection (a) of this section [amending section 203(d) of Pub. L. 91–373, set out above] shall apply to weeks beginning after December 31, 1976, and the amendments made by subsection (b) of this section [amending section 203(e) of Pub. L. 91–373, set out above] shall apply to weeks beginning after March 30, 1977.'']

STUDY AND REPORT BY SECRETARY OF LABOR COVERING EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM AND SPECIAL UNEMPLOYMENT ASSISTANCE PROGRAM; REPORT ON OR BEFORE JAN. 1, 1977

Section 104 of Pub. L. 94–45, June 30, 1975, 89 Stat. 238, provided that: ''The Secretary of Labor shall conduct a

study and review of the program established by the Emergency Unemployment Compensation Act of 1974 [Pub. L. 93–572, set out above] and the program established under title II of the Emergency Jobs and Unemployment Assistance Act of 1974 [Pub. L. 93–567, title II, set out above] and shall submit to the Congress not later than January 1, 1977, a report on such study and review. Such study and review shall include—

''(1) the employment, economic, and demographic characteristics of individuals receiving benefits under either such program,

''(2) the needs of the long-term unemployed for job counseling, testing, referral and placement services, skill and apprenticeship training, career-related education programs, and public service employment opportunities, and

''(3) an examination of all other benefits to which individuals receiving benefits under either such program are eligible together with an investigation of important factors affecting unemployment, a comparison of the aggregate value of such other benefits plus benefits received under either such program with the amount of compensation received by such individuals in their most recent position of employment.''

LOANS TO UNEMPLOYMENT FUND OF VIRGIN ISLANDS

Pub. L. 94–45, title III, § 301, June 30, 1975, 89 Stat. 243, as amended by Pub. L. 94–354, July 12, 1976, 90 Stat. 888; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) The Secretary of Labor (hereinafter in this section referred to as the 'Secretary') may make loans to the Virgin Islands in such amounts as he determines to be necessary for the payment in any month of compensation under the unemployment compensation law of the Virgin Islands. A loan may be made under this subsection for the payment of compensation in any month only if—

''(1) the Governor of the Virgin Islands submits an application therefor no earlier than the first day of the preceding month; and

''(2) such application contains an estimate of the amount of the loan which will be required by the Virgin Islands for the payment of compensation in such month.

''(b) For purposes of this section—

''(1) an application for loan under subsection (a) shall be made on such forms and shall contain such information and data (fiscal and otherwise) concerning the operation and administration of the unemployment compensation law of the Virgin Islands as the Secretary deems necessary or relevant to the performance of his duties under this section;

''(2) the amount required by the Virgin Islands for the payment of compensation in any month shall be determined with due allowance for contingencies and taking into account all other amounts that will be available in the unemployment fund of the Virgin Islands for the payment of compensation in such month; and

''(3) the term 'compensation' means cash benefits payable to individuals with respect to their unemployment, exclusive of expenses of administration.

''(c) Any loan made under subsection (a) shall be repayable (without interest) not later than January 1, 1979. If after January 1, 1979, any portion of any such loan remains unpaid, the Virgin Islands shall pay interest thereon, until the loan is paid in full, at a rate equal to the rate of interest in effect under section 6621 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]. If at some future date the Federal Unemployment Tax Act [section 3301 et seq. of this title] shall be made applicable to the Virgin Islands, then, any amount of principal or interest due on any such loan remaining unpaid on such date shall be treated, for purposes of section 3302(c)(3) of the Internal Revenue Code of 1986, as an advance made to the Virgin Islands under title XII of the Social Security Act [42 U.S.C. 1321 et seq.].

''(d) No loan may be made under subsection (a) for any month beginning after September 30, 1977. The aggregate of the loans which may be made under subsection (a) shall not exceed $15,000,000.

''(e) There are authorized to be appropriated from the general fund of the Treasury such sums as may be necessary to carry out this section.''

UNEMPLOYMENT COMPENSATION LAW OF COMMONWEALTH OF PUERTO RICO

Section 543(b) of Pub. L. 86–778, title V, Sept. 13, 1960, 74 Stat. 986, provided that: ''The unemployment compensation law of the Commonwealth of Puerto Rico shall be considered as meeting the requirements of—

''(1) Section 3304(a)(2) of the Federal Unemployment Tax Act [26 U.S.C. 3304(a)(2)], if such law provides that no compensation is payable with respect to any day of unemployment occurring before January 1, 1959.

''(2) Section 3304(a)(3) of the Federal Unemployment Tax Act [26 U.S.C. 3304(a)(3)] and section 303(a)(4) of the Social Security Act [42 U.S.C. 503(a)(4)], if such law contains the provisions required by those sections and if it requires that, on or before February 1, 1961, there be paid over to the Secretary of the Treasury, for credit to the Puerto Rico account in the Unemployment Trust Fund, an amount equal to the excess of—

''(A) the aggregate of the moneys received in the Puerto Rico unemployment fund before January 1, 1961, over

''(B) the aggregate of the moneys paid from such fund before January 1, 1961, as unemployment compensation or as refunds of contributions erroneously paid.''

§ 3305. Applicability of State law

(a) Interstate and foreign commerce

No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce.

(b) Federal instrumentalities in general

The legislature of any State may require any instrumentality of the United States (other than an instrumentality to which section 3306(c)(6) applies), and the individuals in its employ, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 and (except as provided in section 5240 of the Revised Statutes, as amended (12 U.S.C., sec. 484), and as modified by subsection (c)), to comply otherwise with such law. The permission granted in this subsection shall apply (A) only to the extent that no discrimination is made against such instrumentality, so that if the rate of contribution is uniform upon all other persons subject to such law on account of having individuals in their employ, and upon all employees of such persons, respectively, the contributions required of such instrumentality or the individuals in its employ shall not be at a greater rate than is required of such other persons and such employees, and if the rates are determined separately for different persons or classes of persons having individuals in their employ or for different classes of employees, the determination shall be based solely upon unemployment experience and other factors bearing a direct relation to unemployment

risk; (B) only if such State law makes provision for the refund of any contributions required under such law from an instrumentality of the United States or its employees for any year in the event such State is not certified by the Secretary of Labor under section 3304 with respect to such year; and (C) only if such State law makes provision for the payment of unemployment compensation to any employee of any such instrumentality of the United States in the same amount, on the same terms, and subject to the same conditions as unemployment compensation is payable to employees of other employers under the State unemployment compensation law.

(c) National banks

Nothing contained in section 5240 of the Revised Statutes, as amended (12 U.S.C. 484), shall prevent any State from requiring any national banking association to render returns and reports relative to the association's employees, their remuneration and services, to the same extent that other persons are required to render like returns and reports under a State law requiring contributions to an unemployment fund. The Comptroller of the Currency shall, upon receipt of a copy of any such return or report of a national banking association from, and upon request of, any duly authorized official, body, or commission of a State, cause an examination of the correctness of such return or report to be made at the time of the next succeeding examination of such association, and shall thereupon transmit to such official, body, or commission a complete statement of his findings respecting the accuracy of such returns or reports.

(d) Federal property

No person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or possessed by the United States.

[(e) Repealed. Sept. 1, 1954, ch. 1212, § 4(c), 68 Stat. 1135]

(f) American vessels

The legislature of any State in which a person maintains the operating office, from which the operations of an American vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed and controlled, may require such person and the officers and members of the crew of such vessel to make contributions to its unemployment fund under its State unemployment compensation law approved by the Secretary of Labor under section 3304 and otherwise to comply with its unemployment compensation law with respect to the service performed by an officer or member of the crew on or in connection with such vessel to the same extent and with the same effect as though such service was performed entirely within such State. Such person and the officers and members of the crew of such vessel shall not be required to make contributions, with respect to such service, to the unemployment fund of any other State. The permission granted by this subsection is subject to the condition that such service shall be treated, for purposes of wage credits given employees, like other service subject to such State unemployment compensation law performed for such person in such State, and also subject to the same limitation, with respect to contributions required from such person and from the officers and members of the crew of such vessel, as is imposed by the second sentence (other than clause (B) thereof) of subsection (b) with respect to contributions required from instrumentalities of the United States and from individuals in their employ.

(g) Vessels operated by general agents of United States

The permission granted by subsection (f) shall apply in the same manner and under the same conditions (including the obligation to comply with all requirements of State unemployment compensation laws) to general agents of the Secretary of Commerce with respect to service performed by officers and members of the crew on or in connection with American vessels—

(1) owned by or bareboat chartered to the United States, and

(2) whose business is conducted by such general agents.

As to any such vessel, the State permitted to require contributions on account of such service shall be the State to which the general agent would make contributions if the vessel were operated for his own account. Such general agents are designated, for this purpose, instrumentalities of the United States neither wholly nor partially owned by it and shall not be exempt from the tax imposed by section 3301. The permission granted by this subsection is subject to the same conditions and limitations as are imposed in subsection (f), except that clause (B) of the second sentence of subsection (b) shall apply.

(h) Requirement by State of contributions

Any State may, as to service performed on account of which contributions are made pursuant to subsection (g)—

(1) require contributions from persons performing such service under its unemployment compensation law or temporary disability insurance law administered in connection therewith, and

(2) require general agents of the Secretary of Commerce to make contributions under such temporary disability insurance law and to make such deductions from wages or remuneration as are required by such unemployment compensation or temporary disability insurance law.

(i) General agent as legal entity

Each general agent of the Secretary of Commerce making contributions pursuant to subsection (g) or (h) shall, for purposes of such subsections, be considered a legal entity in his capacity as an instrumentality of the United States, separate and distinct from his identity as a person employing individuals on his own account.

(j) Denial of credits in certain cases

Any person required, pursuant to the permission granted by this section, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 shall not be entitled to the credits permitted, with respect to the unemployment compensation law of a State, by subsections (a) and (b) of section 3302 against the tax imposed by section 3301 for any taxable year if, on October 31 of such taxable year, the Secretary of Labor certifies to the Secretary of the Treasury his finding, after reasonable notice and opportunity for hearing to the State agency, that the unemployment compensation law of such State is inconsistent with any one or more of the conditions on the basis of which such permission is granted or that, in the application of the State law with respect to the 12-month period ending on such October 31, there has been a substantial failure to comply with any one or more of such conditions. For purposes of section 3310, a finding of the Secretary of Labor under this subsection shall be treated as a finding under section 3304(c).

(Aug. 16, 1954, ch. 736, 68A Stat. 445; Sept. 1, 1954, ch. 1212, § 4(c), 68 Stat. 1135; Pub. L. 86–778, title V, § 531(a), (b), Sept. 13, 1960, 74 Stat. 983; Pub. L. 91–373, title I, § 123, Aug. 10, 1970, 84 Stat. 702; Pub. L. 94–455, title XIX, §§ 1903(a)(15), 1906(b)(13)(C), Oct. 4, 1976, 90 Stat. 1809, 1834.)

AMENDMENTS

1976—Subsec. (g). Pub. L. 94–455, § 1903(a)(15)(A), struck out ''on or after July 1, 1953,'' after ''respect to service performed''.

Subsec. (h). Pub. L. 94–455, 1903(a)(15)(B), struck out ''on or after July 1, 1953, and'' after ''as to service performed''.

Subsec. (j). Pub. L. 94–455, §§ 1903(a)(15)(C), 1906(b)(13)(C), struck out ''after December 31, 1971,'' after ''for any taxable year'' and substituted ''to the Secretary of the Treasury'' for ''to the Secretary''.

1970—Subsec. (j). Pub. L. 91–373 added subsec. (j).

1960—Subsec. (b). Pub. L. 86–778, § 531(a), substituted ''(other than an instrumentality to which section 3306(c)(6) applies)'' for ''except such as are (1) wholly owned by the United States, or (2) exempt from the tax imposed by section 3301 by virtue of any other provision of law,'' and added cl. (C).

Subsec. (g). Pub. L. 86–778, § 531(b), substituted ''neither wholly nor partially'' for ''not wholly''.

1954—Subsec. (e). Act Sept. 1, 1954, repealed subsec. (e) which related to the Bonneville Power Administrator.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 535 of part 3 (§§ 531–535) of title V of Pub. L. 86–778 provided that: ''The amendments made by this part [enacting section 3308 and amending this section and section 3306 of this title] (other than the amendments made by subsections (e) and (f) of section 531 [amending sections 1361 and 1367 of Title 42, The Public Health and Welfare]) shall apply with respect to remuneration paid after 1961 for services performed after 1961. The amendments made by subsections (e) and (f) of section 531 shall apply with respect to any week of unemployment which begins after December 31, 1960.'' [The second sentence of section 535 was repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 661.]

EFFECTIVE DATE OF 1954 AMENDMENT

Section 4(c) of act Sept. 1, 1954, provided that the amendment made by that section is effective with respect to services performed after Dec. 31, 1954.

APPLICABILITY TO FEDERAL LAND BANKS, FEDERAL INTERMEDIATE CREDIT BANKS, AND BANKS FOR COOPERATIVES

Section 531(g) of Pub. L. 86–778, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Notwithstanding section 203(b) of the Farm Credit Act of 1959, sections 3305(b), 3306(c)(6), and 3308 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and sections 1501(a) and 1507(a) of the Social Security Act [sections 1361(a) and 1367 of Title 42, The Public Health and Welfare] shall be applicable, according to their terms, to the Federal land banks, Federal intermediate credit banks, and banks for cooperatives.''

§ 3306. Definitions

(a) Employer

For purposes of this chapter—

(1) In general

The term ''employer'' means, with respect to any calendar year, any person who—

(A) during any calendar quarter in the calendar year or the preceding calendar year paid wages of $1,500 or more, or

(B) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least one individual in employment for some portion of the day.

For purposes of this paragraph, there shall not be taken into account any wages paid to, or employment of, an employee performing domestic services referred to in paragraph (3).

(2) Agricultural labor

In the case of agricultural labor, the term ''employer'' means, with respect to any calendar year, any person who—

(A) during any calendar quarter in the calendar year or the preceding calendar year paid wages of $20,000 or more for agricultural labor, or

(B) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least 10 individuals in employment in agricultural labor for some portion of the day.

(3) Domestic service

In the case of domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, the term ''employer'' means, with respect to any calendar year, any person who during any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of $1,000 or more for such service.

(4) Special rule

A person treated as an employer under paragraph (3) shall not be treated as an employer with respect to wages paid for any service other than domestic service referred to in paragraph (3) unless such person is treated as an employer under paragraph (1) or (2) with respect to such other service.

(b) Wages

For purposes of this chapter, the term ''wages'' means all remuneration for employ-

ment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include—

(1) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to $7,000 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to $7,000 to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

(2) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term ''wages'' only payments which are received under a workmen's compensation law), or

(B) medical or hospitalization expenses in connection with sickness or accident disability, or

(C) death;

[(3) Repealed. Pub. L. 98–21, title III, § 324(b)(3)(B), Apr. 20, 1983, 97 Stat. 124]

(4) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;

(5) any payment made 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 payment, is a plan described in section 403(a),

(C) under a simplified employee pension (as defined in section 408(k)(1)), other than any contributions described in section 408(k)(6),

(D) under or to an annuity contract described in section 403(b), other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise),

(E) under or to an exempt governmental deferred compensation plan (as defined in section 3121(v)(3)),

(F) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this paragraph to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974; [1]

(G) under a cafeteria plan (within the meaning of section 125) if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received, or

(H) under an arrangement to which section 408(p) applies, other than any elective contributions under paragraph (2)(A)(i) thereof,[2]

(6) the payment by an employer (without deduction from the remuneration of the employee)—

(A) of the tax imposed upon an employee under section 3101, or

(B) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(7) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

[(8) Repealed. Pub. L. 98–21, title III, § 324(b)(3)(B), Apr. 20, 1983, 97 Stat. 124]

(9) remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 (determined without regard to section 274(n));

(10) any payment or series of payments by an employer to an employee or any of his dependents which is paid—

[1] So in original. The semicolon probably should be a comma.

[2] So in original. The comma probably should be a semicolon.

(A) upon or after the termination of an employee's employment relationship because of (i) death, or (ii) retirement for disability, and

(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(11) remuneration for agricultural labor paid in any medium other than cash;

(12) any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans);

(13) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127, 129, 134(b)(4), or 134(b)(5);

(14) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119;

(15) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(16) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 108(f)(4), 117, or 132;

(17) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b);

(18) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d);

(19) remuneration on account of—

(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

(B) any disposition by the individual of such stock; or

(20) any benefit or payment which is excludable from the gross income of the employee under section 139B(b).

Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of the parenthetical matter contained in subparagraph (A) of paragraph (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages. Nothing in the regulations prescribed for purposes of chapter 24 (relating to income tax withholding) which provides an exclusion from ''wages'' as used in such chapter shall be construed to require a similar exclusion from ''wages'' in the regulations prescribed for purposes of this chapter.

(c) Employment

For purposes of this chapter, the term ''employment'' means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and (A) any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, and (B) any service, of whatever nature, performed after 1971 outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation) by a citizen of the United States as an employee of an American employer (as defined in subsection (j)(3)), except—

(1) agricultural labor (as defined in subsection (k)) unless—

(A) such labor is performed for a person who—

(i) during any calendar quarter in the calendar year or the preceding calendar year paid remuneration in cash of $20,000 or more to individuals employed in agricultural labor (including labor performed by an alien referred to in subparagraph (B)), or

(ii) on each of some 20 days during the calendar year or the preceding calendar year, each day being in a different calendar week, employed in agricultural labor (including labor performed by an alien referred to in subparagraph (B)) for some portion of the day (whether or not at the same moment of time) 10 or more individuals; and

(B) such labor is not agricultural labor performed by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;

(2) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority unless performed for a person who paid cash remuneration of $1,000 or more to individuals employed in such domestic service in any calendar quarter in the calendar year or the preceding calendar year;

(3) 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;

(4) service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States;

(5) service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

(6) service performed in the employ of the United States Government or of an instrumentality of the United States which is—

(A) wholly or partially owned by the United States, or

(B) exempt from the tax imposed by section 3301 by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;

(7) service performed in the employ of a State, or any political subdivision thereof, or in the employ of an Indian tribe, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions or Indian tribes; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 3301;

(8) service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a);

(9) service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act (45 U.S.C. 351);

(10)(A) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521, if the remuneration for such service is less than $50, or

(B) service performed in the employ of a school, college, or university, if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school, college, or university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (II) such employment will not be covered by any program of unemployment insurance, or

(C) service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers, or

(D) service performed in the employ of a hospital, if such service is performed by a patient of such hospital;

(11) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) if the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law;

(14) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(15)(A) service 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;

(B) service 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, or is entitled to be credited with the unsold newspapers or magazines turned back;

(16) service performed in the employ of an international organization;

(17) service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except—

(A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and

(B) service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);

(18) service described in section 3121(b)(20);

(19) Service[3] which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(15)(F), (J), (M), or (Q)), and which is performed to carry out the purpose specified in subparagraph (F), (J), (M), or (Q), as the case may be;

(20) service performed by a full time student (as defined in subsection (q)) in the employ of an organized camp—

(A) if such camp—

(i) did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year, or

(ii) had average gross receipts for any 6 months in the preceding calendar year which were not more than 33⅓ percent of its average gross receipts for the other 6 months in the preceding calendar year; and

(B) if such full time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year; or

(21) service performed by a person committed to a penal institution.

(d) Included and excluded service

For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term ''pay period'' means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (c)(9).

(e) State agency

For purposes of this chapter, the term ''State agency'' means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(f) Unemployment fund

For purposes of this chapter, the term ''unemployment fund'' means a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 904 of the Social Security Act, as amended (42 U.S.C. 1104), shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in existence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b); except that—

(1) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration;

(2) the amounts specified by section 903(c)(2) or 903(d)(4) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices,[4]

(3) nothing in this subsection shall be construed to prohibit deducting any amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance, or the withholding of Federal, State, or local individual income tax, if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor;

[3] So in original. Probably should not be capitalized.

[4] So in original. The comma probably should be a semicolon.

(4) amounts may be deducted from unemployment benefits and used to repay overpayments as provided in section 303(g) of the Social Security Act;

(5)[5] amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor; and

(5)[5] amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in subsection (t)).

(g) Contributions

For purposes of this chapter, the term ''contributions'' means payments required by a State law to be made into an unemployment fund by any person on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the remuneration of individuals in his employ.

(h) Compensation

For purposes of this chapter, the term ''compensation'' means cash benefits payable to individuals with respect to their unemployment.

(i) Employee

For purposes of this chapter, the term ''employee'' has the meaning assigned to such term by section 3121(d), except that paragraph (4) and subparagraphs (B) and (C) of paragraph (3) shall not apply.

(j) State, United States, and American employer

For purposes of this chapter—

(1) State

The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(2) United States

The term ''United States'' when used in a geographical sense includes the States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(3) American employer

The term ''American employer'' means a person who is—

(A) an individual who is a resident of the United States,

(B) a partnership, if two-thirds or more of the partners are residents of the United States,

(C) a trust, if all of the trustees are residents of the United States, or

(D) a corporation organized under the laws of the United States or of any State.

An individual who is a citizen of the Commonwealth of Puerto Rico or the Virgin Islands (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.

(k) Agricultural labor

For purposes of this chapter, the term ''agricultural labor'' has the meaning assigned to such term by subsection (g) of section 3121, except that for purposes of this chapter subparagraph (B) of paragraph (4) of such subsection (g) shall be treated as reading:

''(B) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (A), but only if such operators produced more than one-half of the commodity with respect to which such service is performed;''.

[(*l*) Repealed. Sept. 1, 1954, ch. 1212, § 4(c), 68 Stat. 1135]

(m) American vessel and aircraft

For purposes of this chapter, the term ''American vessel'' means any vessel documented or numbered under the laws of the United States; and 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 its crew 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; and the term ''American aircraft'' means an aircraft registered under the laws of the United States.

(n) Vessels operated by general agents of United States

Notwithstanding the provisions of subsection (c)(6), service performed by officers and members of the crew of a vessel which would otherwise be included as employment under subsection (c) shall not be excluded by reason of the fact that it is performed on or in connection with an American vessel—

(1) owned by or bareboat chartered to the United States and

(2) whose business is conducted by a general agent of the Secretary of Commerce.

For purposes of this chapter, each such general agent shall be considered a legal entity in his capacity as such general agent, separate and distinct from his identity as a person employing individuals on his own account, and the officers and members of the crew of such an American vessel whose business is conducted by a general agent of the Secretary of Commerce shall be deemed to be performing services for such general agent rather than the United States. Each such general agent who in his capacity as such is an employer within the meaning of subsection (a) shall be subject to all the requirements imposed upon an employer under this chapter with respect to service which constitutes employment by reason of this subsection.

(*o*) Special rule in case of certain agricultural workers

(1) Crew leaders who are registered or provide specialized agricultural labor

For purposes of this chapter, any individual who is a member of a crew furnished by a crew leader to perform agricultural labor for any other person shall be treated as an employee of such crew leader—

(A) if—

(i) such crew leader holds a valid certificate of registration under the Migrant and

[5] So in original. Two pars. (5) have been enacted.

Seasonal Agricultural Worker Protection Act; or

(ii) substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(B) if such individual is not an employee of such other person within the meaning of subsection (i).

(2) Other crew leaders

For purposes of this chapter, in the case of any individual who is furnished by a crew leader to perform agricultural labor for any other person and who is not treated as an employee of such crew leader under paragraph (1)—

(A) such other person and not the crew leader shall be treated as the employer of such individual; and

(B) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his behalf or on behalf of such other person) for the agricultural labor performed for such other person.

(3) Crew leader

For purposes of this subsection, the term ''crew leader'' means an individual who—

(A) furnishes individuals to perform agricultural labor for any other person,

(B) pays (either on his behalf or on behalf of such other person) the individuals so furnished by him for the agricultural labor performed by them, and

(C) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(p) Concurrent employment by two or more employers

For purposes of sections 3301, 3302, and 3306(b)(1), if two or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

(q) Full time student

For purposes of subsection (c)(20), an individual shall be treated as a full time student for any period—

(1) during which the individual is enrolled as a full time student at an educational institution, or

(2) which is between academic years or terms if—

(A) the individual was enrolled as a full time student at an educational institution for the immediately preceding academic year or term, and

(B) there is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in subparagraph (A).

(r) Treatment of certain deferred compensation and salary reduction arrangements

(1) Certain employer contributions treated as wages

Nothing in any paragraph of subsection (b) (other than paragraph (1)) shall exclude from the term ''wages''—

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not included in gross income by reason of section 402(e)(3), or

(B) any amount treated as an employer contribution under section 414(h)(2) where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).

(2) Treatment of certain nonqualified deferred compensation plans

(A) In general

Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this chapter as of the later of—

(i) when the services are performed, or

(ii) when there is no substantial risk of forfeiture of the rights to such amount.

(B) Taxed only once

Any amount taken into account as wages by reason of subparagraph (A) (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this chapter.

(C) Nonqualified deferred compensation plan

For purposes of this paragraph, the term ''nonqualified deferred compensation plan'' means any plan or other arrangement for deferral of compensation other than a plan described in subsection (b)(5).

(s) Tips treated as wages

For purposes of this chapter, the term ''wages'' includes tips which are—

(1) received while performing services which constitute employment, and

(2) included in a written statement furnished to the employer pursuant to section 6053(a).

(t) Self-employment assistance program

For the purposes of this chapter, the term ''self-employment assistance program'' means a program under which—

(1) individuals who meet the requirements described in paragraph (3) are eligible to receive an allowance in lieu of regular unemployment compensation under the State law for the purpose of assisting such individuals in establishing a business and becoming self-employed;

(2) the allowance payable to individuals pursuant to paragraph (1) is payable in the same amount, at the same interval, on the same

terms, and subject to the same conditions, as regular unemployment compensation under the State law, except that—

(A) State requirements relating to availability for work, active search for work, and refusal to accept work are not applicable to such individuals;

(B) State requirements relating to disqualifying income are not applicable to income earned from self-employment by such individuals; and

(C) such individuals are considered to be unemployed for the purposes of Federal and State laws applicable to unemployment compensation,

as long as such individuals meet the requirements applicable under this subsection;

(3) individuals may receive the allowance described in paragraph (1) if such individuals—

(A) are eligible to receive regular unemployment compensation under the State law, or would be eligible to receive such compensation except for the requirements described in subparagraph (A) or (B) of paragraph (2);

(B) are identified pursuant to a State worker profiling system as individuals likely to exhaust regular unemployment compensation; and

(C) are participating in self-employment assistance activities which—

(i) include entrepreneurial training, business counseling, and technical assistance; and

(ii) are approved by the State agency; and

(D) are actively engaged on a full-time basis in activities (which may include training) relating to the establishment of a business and becoming self-employed;

(4) the aggregate number of individuals receiving the allowance under the program does not at any time exceed 5 percent of the number of individuals receiving regular unemployment compensation under the State law at such time;

(5) the program does not result in any cost to the Unemployment Trust Fund (established by section 904(a) of the Social Security Act) in excess of the cost that would be incurred by such State and charged to such Fund if the State had not participated in such program; and

(6) the program meets such other requirements as the Secretary of Labor determines to be appropriate.

(u) Indian tribe

For purposes of this chapter, the term ''Indian tribe'' has the meaning given to such term by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)), and includes any subdivision, subsidiary, or business enterprise wholly owned by such an Indian tribe.

(Aug. 16, 1954, ch. 736, 68A Stat. 447; Sept. 1, 1954, ch. 1212, §§1, 4(c), 68 Stat. 1130, 1135; Pub. L. 86–70, §22(a), June 25, 1959, 73 Stat. 146; Pub. L. 86–624, §18(d), July 12, 1960, 74 Stat. 416; Pub. L. 86–778, title V, §§531(c), 532–534, 543(a), Sept. 13, 1960, 74 Stat. 983, 984, 986; Pub. L. 87–256, §110(f), Sept. 21, 1961, 75 Stat. 537; Pub. L. 87–792, §7(k), Oct. 10, 1962, 76 Stat. 830; Pub. L. 88–650, §4(c), Oct. 13, 1964, 78 Stat. 1077; Pub. L. 90–248, title V, §504(b), Jan. 2, 1968, 81 Stat. 935; Pub. L. 91–53, §1, Aug. 7, 1969, 83 Stat. 91; Pub. L. 91–373, title I, §§101(a), 102(a), 103(a), 105(a), (b), 106(a), title III, §302, Aug. 10, 1970, 84 Stat. 696, 697, 699, 700, 713; Pub. L. 94–455, title XIX, §§1903(a)(16), 1906(b)(13)(C), Oct. 4, 1976, 90 Stat. 1810, 1834; Pub. L. 94–566, title I, §§111 (a), (b), 112(a), 113(a), 114(a), 116(b), title II, §211(a), Oct. 20, 1976, 90 Stat. 2667–2669, 2672, 2676; Pub. L. 95–216, title III, §314(b), Dec. 20, 1977, 91 Stat. 1536; Pub. L. 95–472, §3(a), Oct. 17, 1978, 92 Stat. 1333; Pub. L. 95–600, title I, §164(b)(2), Nov. 6, 1978, 92 Stat. 2813; Pub. L. 96–84, §4(a), (b), Oct. 10, 1979, 93 Stat. 654; Pub. L. 96–222, title I, §101(a)(10)(B)(ii), Apr. 1, 1980, 94 Stat. 201; Pub. L. 96–499, title XI, §1141(b), Dec. 5, 1980, 94 Stat. 2694; Pub. L. 97–34, title I, §124(e)(2)(A), title VIII, §822(a), Aug. 13, 1981, 95 Stat. 200, 351; Pub. L. 97–248, title II, §§271(a), 276(a)(1), (b)(1), (2), 277, Sept. 3, 1982, 96 Stat. 554, 558, 559; Pub. L. 98–21, title III, §§324(b)(1)–(4)(B), 327(c), 328(c), Apr. 20, 1983, 97 Stat. 123, 124, 127, 128; Pub. L. 98–135, title II, §§201(a), 202, Oct. 24, 1983, 97 Stat. 860; Pub. L. 98–369, div. A, title IV, §491(d)(37), title V, §531(d)(3), div. B, title VI, §2661(*o*)(4), July 18, 1984, 98 Stat. 851, 884, 1159; Pub. L. 99–272, title XII, §12401(b)(2), title XIII, §13303(a), Apr. 7, 1986, 100 Stat. 297, 327; Pub. L. 99–509, title IX, §9002(b)(2)(B), Oct. 21, 1986, 100 Stat. 1971; Pub. L. 99–514, title I, §122(e)(3), title XI, §§1108(g)(8), 1151(d)(2)(B), title XVIII, §§1884(3), 1899A(44), (45), Oct. 22, 1986, 100 Stat. 2112, 2435, 2505, 2919, 2961; Pub. L. 99–595, Oct. 31, 1986, 100 Stat. 3348; Pub. L. 100–647, title I, §§1001(d)(2)(C)(iii), (g)(4)(B)(ii), 1011B(a) (22)(C), (23)(A), 1018(u)(50), title VIII, §8016(a)(3)(B), Nov. 10, 1988, 102 Stat. 3351, 3352, 3486, 3593, 3792; Pub. L. 101–140, title II, §203(a)(2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 102–318, title III, §303(a), title IV, §401(a)(2), title V, §521(b)(35), July 3, 1992, 106 Stat. 297, 298, 312; Pub. L. 103–182, title V, §507(a), (b)(2), Dec. 8, 1993, 107 Stat. 2153, 2154; Pub. L. 103–296, title III, §320(a)(1)(E), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 103–465, title VII, §702(c)(2), Dec. 8, 1994, 108 Stat. 4997; Pub. L. 104–188, title I, §§1203(a), 1421(b)(8)(C), 1704(t)(10), Aug. 20, 1996, 110 Stat. 1773, 1798, 1888; Pub. L. 104–191, title III, §301(c)(2)(B), Aug. 21, 1996, 110 Stat. 2049; Pub. L. 105–33, title V, §5406(a), Aug. 5, 1997, 111 Stat. 605; Pub. L. 106–554, §1(a)(7) [title I, §166(a), (d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–627; Pub. L. 107–147, title II, §209(d)(1), Mar. 9, 2002, 116 Stat. 33; Pub. L. 108–121, title I, §106(b)(3), Nov. 11, 2003, 117 Stat. 1339; Pub. L. 108–173, title XII, §1201(d)(2)(B), Dec. 8, 2003, 117 Stat. 2477; Pub. L. 108–357, title II, §251(a)(3), title III, §320(b)(3), Oct. 22, 2004, 118 Stat. 1458, 1473; Pub. L. 108–375, div. A, title V, §585(b)(2)(C), Oct. 28, 2004, 118 Stat. 1932; Pub. L. 110–245, title I, §115(b), June 17, 2008, 122 Stat. 1636.)

REFERENCES IN TEXT

Section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(5)(F), is classified to section 1002(2)(B)(ii) of Title 29, Labor.

Subchapter C of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (c), was comprised of sections 1600 to 1611 of former Title 26, Internal Reve-

nue Code. Subchapter C of chapter 9 was repealed by section 7851(a)(3) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act, referred to in subsec. (c)(1)(B), are classified to sections 1184(c) and 1101(a)(15)(H), respectively, of Title 8, Aliens and Nationality.

Sections 303(g), 903(c)(2), (d)(4), and 904(a) of the Social Security Act, referred to in subsecs. (f)(2), (4) and (t)(5), are classified to sections 503(g), 1103(c)(2), (d)(4), and 1104(a), respectively, of Title 42, The Public Health and Welfare.

The Migrant and Seasonal Agricultural Worker Protection Act, referred to in subsec. (*o*)(1)(A)(i), is Pub. L. 97–470, Jan. 14, 1983, 96 Stat. 2584, as amended, which is classified generally to chapter 20 (§ 1801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 29 and Tables.

AMENDMENTS

2008—Subsec. (b)(20). Pub. L. 110–245 added par. (20).

2004—Subsec. (b)(13). Pub. L. 108–375 substituted ''134(b)(4), or 134(b)(5)'' for ''or 134(b)(4)''.

Subsec. (b)(16). Pub. L. 108–357, § 320(b)(3), inserted ''108(f)(4),'' after ''74(c),''.

Subsec. (b)(19). Pub. L. 108–357, § 251(a)(3), added par. (19).

2003—Subsec. (b)(13). Pub. L. 108–121 substituted '', 129, or 134(b)(4)'' for ''or 129''.

Subsec. (b)(18). Pub. L. 108–173 added par. (18).

2002—Subsec. (f)(2). Pub. L. 107–147 inserted ''or 903(d)(4)'' before ''of the Social Security Act''.

2000—Subsec. (c)(7). Pub. L. 106–554, § 1(a)(7) [title I, § 166(a)], inserted ''or in the employ of an Indian tribe,'' after ''service performed in the employ of a State, or any political subdivision thereof,'' and ''or Indian tribes'' after ''wholly owned by one or more States or political subdivisions''.

Subsec. (u). Pub. L. 106–554, § 1(a)(7) [title I, § 166(d)], added subsec. (u).

1997—Subsec. (c)(21). Pub. L. 105–33 added par. (21).

1996—Subsec. (b)(5)(H). Pub. L. 104–188, § 1421(b)(8)(C), added subpar. (H).

Subsec. (b)(17). Pub. L. 104–191 added par. (17).

Subsec. (c)(1)(B). Pub. L. 104–188, § 1203(a), struck out ''before January 1, 1995,'' after ''labor performed''.

Subsec. (k). Pub. L. 104–188, § 1704(t)(10), inserted a period at end.

1994—Subsec. (c)(19). Pub. L. 103–296 substituted ''(J), (M), or (Q)'' for ''(J), or (M)'' wherever appearing.

Subsec. (f)(3) to (5). Pub. L. 103–465 added par. (3) and redesignated former pars. (3) and (4) as (4) and (5) relating to payment of short-time compensation, respectively.

1993—Subsec. (f)(5). Pub. L. 103–182, § 507(b)(2), added par. (5).

Subsec. (t). Pub. L. 103–182, § 507(a), added subsec. (t).

1992—Subsec. (c)(1)(B). Pub. L. 102–318, § 303(a), substituted ''1995'' for ''1993''.

Subsec. (f)(4). Pub. L. 102–318, § 401(a)(2), added par. (4).

Subsec. (r)(1)(A). Pub. L. 102–318, § 521(b)(35), substituted ''402(e)(3)'' for ''402(a)(8)''.

1989—Subsec. (t). Pub. L. 101–140 amended this section to read as if amendments by Pub. L. 100–647, § 1011B(a)(22)(C), had not been enacted, see 1988 Amendment note below.

1988—Subsec. (b)(5)(G). Pub. L. 100–647, § 1011B(a)(23)(A), inserted ''if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received'' after ''section 125)''.

Subsec. (b)(9). Pub. L. 100–647, § 1001(g)(4)(B)(ii), inserted ''(determined without regard to section 274(n))'' after ''section 217''.

Subsec. (c)(1)(B). Pub. L. 100–647, § 1018(u)(50), amended Pub. L. 99–272, § 13303(a), see 1986 Amendment notes below.

Subsec. (c)(19). Pub. L. 100–647, § 1001(d)(2)(C)(iii), substituted ''(F), (J), or (M)'' for ''(F) or (J)'' in three places.

Subsec. (i). Pub. L. 100–647, § 8016(a)(3)(B), substituted ''paragraph (4) and subparagraphs (B) and (C) of paragraph (3)'' for ''paragraph (3) and subparagraphs (B) and (C) of paragraph (4)''.

Subsec. (t). Pub. L. 100–647, § 1011B(a)(22)(C), added subsec. (t) relating to benefits provided under certain employee benefit plans.

1986—Subsec. (b)(2)(A). Pub. L. 99–514, § 1899A(44), substituted ''workmen's compensation'' for ''workman's compensation''.

Subsec. (b)(5)(C). Pub. L. 99–514, § 1108(g)(8), added subpar. (C) and struck out former subpar. (C) which read as follows: ''under a simplified employee pension if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2) for such payment,''.

Subsec. (b)(5)(G). Pub. L. 99–514, § 1151(d)(2)(B), added subpar. (G).

Subsec. (b)(13). Pub. L. 99–514, § 1899A(45), substituted a semicolon for a comma.

Subsec. (b)(16). Pub. L. 99–514, § 122(e)(3), inserted reference to section 74(c).

Subsec. (c)(1)(B). Pub. L. 99–595 substituted ''January 1, 1993'' for ''January 1, 1988''.

Pub. L. 99–272, § 13303(a), as amended by Pub. L. 100–647, § 1018(u)(50), substituted ''January 1, 1988'' for ''January 1, 1986''.

Subsec. (f)(3). Pub. L. 99–272, § 12401(b)(2), added par. (3).

Subsec. (i). Pub. L. 99–509 substituted ''paragraph (3) and subparagraphs (B) and (C) of paragraph (4)'' for ''subparagraphs (B) and (C) of paragraph (3)''.

Subsec. (*o*)(1)(A)(i). Pub. L. 99–514, § 1884(3), substituted ''Migrant and Seasonal Agricultural Worker Protection Act'' for ''Farm Labor Contractor Registration Act of 1963''.

1984—Subsec. (b). Pub. L. 98–369, § 531(d)(3)(A), in provisions preceding par. (1), inserted ''(including benefits)''.

Subsec. (b)(5)(C) to (G). Pub. L. 98–369, § 491(d)(37), struck out subpar. (C) which provided: ''under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a),'' and redesignated subpars. (D) to (G) as (C) to (F), respectively.

Subsec. (b)(16). Pub. L. 98–369, § 531(d)(3)(B), added par. (16).

Subsec. (r)(1)(B). Pub. L. 98–369, § 2661(*o*)(4), substituted ''section 414(h)(2) where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise)'' for ''section 414(h)(2)''.

Subsec. (s). Pub. L. 98–369, § 1073(a), added subsec. (s).

1983—Subsec. (b). Pub. L. 98–21, § 327(c)(4), added sentence at end providing that nothing in the regulations prescribed for purposes of chapter 24 (relating to income tax withholding) which provides an exclusion from ''wages'' as used in such chapter shall be construed to require a similar exclusion from ''wages'' in regulations prescribed for purposes of this chapter.

Pub. L. 98–21, § 324(b)(4)(B), added sentence at end providing that, except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of parenthetical text contained in subpar. (A) of par. (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages.

Subsec. (b)(2). Pub. L. 98–21, § 324(b)(3)(A), (4)(A), struck out ''(A) retirement or'', redesignated subpars. (B) to (D) as (A) to (C), respectively, and in subpar. (A), as so redesignated, substituted ''sickness or accident

disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term 'wages' only payments which are received under a workman's compensation law)'' for ''sickness or accident disability''.

Subsec. (b)(3). Pub. L. 98–21, § 324(b)(3)(B), struck out par. (3) which related to any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement.

Subsec. (b)(5)(D). Pub. L. 98–21, § 328(c), substituted ''section 219(b)(2)'' for ''section 219''.

Subsec. (b)(5)(E) to (G). Pub. L. 98–21, § 324(b)(2), added subpars. (E) to (G).

Subsec. (b)(8). Pub. L. 98–21, § 324(b)(3)(B), struck out par. (8) which related to any payment (other than vacation or sick pay) made to an employee after the month in which he attained the age of 65, if he did not work for the employer in the period for which such payment was made.

Subsec. (b)(10)(A). Pub. L. 98–21, § 324(b)(3)(C), struck out cl. (iii) which related to retirement after attaining an age specified in the plan referred to in subpar. (B) or in a pension plan of the employer.

Subsec. (b)(14). Pub. L. 98–21, § 327(c)(1)–(3), added par. (14).

Subsec. (b)(15). Pub. L. 98–135, § 201(a), added par. (15).

Subsec. (c)(1)(B). Pub. L. 98–135, § 202, substituted ''1986'' for ''1984''.

Subsec. (r). Pub. L. 98–21, § 324(b)(1), added subsec. (r).

1982—Subsec. (b)(1). Pub. L. 97–248, § 271(a), substituted ''$7,000'' for ''$6,000'' wherever appearing.

Subsec. (c)(1)(B). Pub. L. 97–248, § 277, substituted ''1984'' for ''1982''.

Subsec. (c)(10)(C). Pub. L. 97–248, § 276(a)(1), struck out ''under the age of 22'' after ''service performed by an individual''.

Subsec. (c)(20). Pub. L. 97–248, § 276(b)(1), added par. (20).

Subsec. (q). Pub. L. 97–248, § 276(b)(2), added subsec. (q).

1981—Subsec. (b)(13). Pub. L. 97–34, § 124(e)(2)(A), substituted ''section 127 or 129'' for ''section 127''.

Subsec. (c)(18), (19). Pub. L. 97–34, § 822(a), added par. (18) and redesignated former par. (18) as (19).

1980—Subsec. (b)(5)(D). Pub. L. 96–222 added subpar. (D).

Subsec. (b)(6). Pub. L. 96–499 struck out ''(or the corresponding section of prior law)'' after ''section 3101'' in subpar. (A) and inserted ''with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor'' following subpar. (B).

1979—Subsec. (c)(1)(A). Pub. L. 96–84, § 4(b), substituted ''including labor performed by an alien'' for ''not taking into account labor performed before January 1, 1980, by an alien'' in parenthetical text of cls. (i) and (ii).

Subsec. (c)(1)(B). Pub. L. 96–84, § 4(a), substituted ''January 1, 1982'' for ''January 1, 1980''.

1978—Subsec. (b)(12). Pub. L. 95–472 added par. (12).

Subsec. (b)(13). Pub. L. 95–600 added par. (13).

1977—Subsec. (p). Pub. L. 95–216 added subsec. (p).

1976—Subsec. (a). Pub. L. 94–566, § 114(a), redesignated existing provisions, consisting of an introductory phrase and pars. (1) and (2), as par. (1), consisting of an introductory phrase and subpars. (A) and (B), inserted provisions following subpar. (B) as so redesignated, and added pars. (2), (3), and (4).

Subsec. (b)(1). Pub. L. 94–566, § 211(a), substituted ''$6,000'' for ''$4,200'' wherever appearing.

Subsec. (b)(11). Pub. L. 94–566, § 111(a), added par. (11).

Subsec. (c). Pub. L. 94–566, § 116(b)(1), struck out ''or in the Virgin Islands'' after ''agreement relating to unemployment compensation'' in parenthetical provisions of cl. (B) preceding par. (1).

Subsec. (c)(1). Pub. L. 94–566, § 111(b), inserted ''unless'' after ''subsection (k))'' and added subpars. (A) and (B).

Subsec. (c)(2). Pub. L. 94–566, § 113(a), inserted ''unless performed for a person who paid cash remuneration of $1,000 or more to individuals employed in such domestic service in any calendar quarter in the calendar year or the preceding calendar year'' after ''sorority''.

Subsec. (c)(9). Pub. L. 94–455, § 1903(a)(16)(A), struck out ''52 Stat. 1094, 1095;'' before ''45 U.S.C. 351''.

Subsec. (c)(12)(B). Pub. L. 94–455, § 1906(b)(13)(C), substituted ''to the Secretary of the Treasury'' for ''to the Secretary''.

Subsec. (c)(18). Pub. L. 94–455, § 1903(a)(16)(B), inserted ''(8 U.S.C. 1101(a)(15)(F) or (J))'' after ''Immigration and Nationality Act, as amended''.

Subsec. (f). Pub. L. 94–455, § 1903(a)(16)(C), struck out ''49 Stat. 640; 52 Stat. 1104, 1105;'' before ''42 U.S.C. 1104''.

Subsec. (j). Pub. L. 94–566, § 116(b)(2), inserted reference to the Virgin Islands in pars. (1) and (2) and in provisions following par. (3).

Subsec. (n). Pub. L. 94–455, § 1903(a)(16)(D), struck out ''on or after July 1, 1953,'' after ''service performed''.

Subsec. (*o*). Pub. L. 94–566, § 112(a), added subsec. (*o*).

1970—Subsec. (a). Pub. L. 91–373, § 101(a), expanded definition of ''employer'' by reducing from 4 to 1 the number of individuals which a person had to employ on each of some 20 days during the calendar year or the preceding calendar year in order to qualify as an employer and inserted provisions making a person an employer who paid wages of $1,500 or more during any calendar quarter in the calendar year or the preceding calendar year.

Subsec. (b)(1). Pub. L. 91–373, § 302, substituted ''$4,200'' for ''$3,000''.

Subsec. (c). Pub. L. 91–373, § 105(a), inserted reference to service performed after 1971 outside the United States by a citizen of the United States as an employee of an American employer.

Subsec. (c)(10). Pub. L. 91–373, § 106(a), designated existing provisions of subpar. (B) as cl. (i) thereof and added cl. (ii) of subpar. (B) and subpars. (C) and (D).

Subsec. (i). Pub. L. 91–373, § 102(a), substituted meaning assigned ''employee'' by section 3121(d) of this title, except that subpars. (B) and (C) of par. (3) were not applicable, as meaning of ''employee'' for purposes of this chapter for a definition of ''employee'' as persons including officers of corporations but not including independent contractors under common law rules or persons not employees under such rules.

Subsec. (j)(3). Pub. L. 91–373, § 105(b), inserted definition of ''American employer''.

Subsec. (k). Pub. L. 91–373, § 103(a), substituted as definition of ''agricultural labor'' a simple reference to that term as defined, with a minor exception, in section 3121 of this title for a full definition of the term, the result of which, in view of the substance of section 3121, excluded from the definition of agricultural labor services performed in connection with the production or harvesting of maple sirup, maple sugar, or mushrooms, or the hatching of poultry unless performed on a farm, and provided a new series of tests to determine whether the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering agricultural or horticultural commodities constitute agricultural labor.

1969—Subsec. (a). Pub. L. 90–53 made status of employer depend also on employment during preceding taxable year.

1968—Subsec. (b)(10). Pub. L. 90–248 added par. (10).

1964—Subsec. (b)(9). Pub. L. 88–650 added par. (9).

1962—Subsec. (b)(5). Pub. L. 87–792 substituted ''is a plan described in section 403(a)'' for ''meets the requirements of section 401(a)(3), (4), (5), and (6)'' in subpar. (B), and added subpar. (C).

1961—Subsec. (c)(18). Pub. L. 87–256 added par. (18).

1960—Subsec. (c). Pub. L. 86–778, § 532(a), included employment on or in connection with an American aircraft within cl. (B) of the opening provisions.

Subsec. (c)(4). Pub. L. 86–778, § 532(b), excluded service performed on or in connection with an aircraft that is not an American aircraft.

Subsec. (c)(6). Pub. L. 86–778, § 531(c), substituted ''wholly or partially owned'' for ''wholly owned'' in cl.

(A), and inserted ''which specifically refers to such section (or the corresponding section of prior law) in granting such exemption'' in cl. (B).

Subsec. (c)(8). Pub. L. 86–778, § 533, substituted ''service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a)'' for ''service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation.''

Subsec. (c)(10). Pub. L. 86–778, § 534, struck out provisions which excepted from definition of ''employment'' service in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association which is preformed away from the home office or is ritualistic service in connection with any such society, order, or association, service performed in the employ of an agricultural or horticultural organization described in section 501(c)(5) of this title, service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to members or their dependents or designated beneficiaries, and service performed in the employ of a school, college, or university, not exempt from income tax under section 501(a) of this title if such service is performed by a student who is enrolled and regularly attending classes.

Subsec. (j). Pub. L. 86–778, § 543(a), included the Commonwealth of Puerto Rico and struck out ''Hawaii'' from definition of ''State'', defined ''United States'', and inserted provisions requiring an individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) to be considered for purposes of this section, as a citizen of the United States.

Pub. L. 86–624 struck out ''Hawaii, and'' before ''the District of Columbia''.

Subsec. (m). Pub. L. 86–778, § 532(c), included aircraft in heading and defined ''American aircraft''.

1959—Subsec. (j). Pub. L. 86–70 struck out ''Alaska,'' before ''Hawaii''.

1954—Subsec. (a). Act Sept. 1, 1954, changed definition of employer from ''eight or more'' to ''4 or more''.

Subsec. (*l*). Act Sept. 1, 1954, repealed subsec. (*l*) which related to certain employees of Bonneville Power Administrator.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–245 effective as if included in section 5 of Pub. L. 110–142, see section 115(d) of Pub. L. 110–245, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by Pub. L. 108–375 applicable to travel benefits provided after Oct. 28, 2004, see section 585(b)(3) of Pub. L. 108–375, set out as a note under section 134 of this title.

Amendment by section 251(a)(3) of Pub. L. 108–357 applicable to stock acquired pursuant to options exercised after Oct. 22, 2004, see section 251(d) of Pub. L. 108–357, set out as a note under section 421 of this title.

Amendment by section 320(b)(3) of Pub. L. 108–357 applicable to amounts received by an individual in taxable years beginning after Dec. 31, 2003, see section 320(c) of Pub. L. 108–357, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 2003 AMENDMENTS

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

Amendment by Pub. L. 108–121 applicable to taxable years beginning after Dec. 31, 2002, see section 106(c) of Pub. L. 108–121, set out as a note under section 134 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT; TRANSITION RULE

Pub. L. 106–554, § 1(a)(7) [title I, § 166(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, provided that:

''(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and section 3309 of this title] shall apply to service performed on or after the date of the enactment of this Act [Dec. 21, 2000].

''(2) TRANSITION RULE.—For purposes of the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.], service performed in the employ of an Indian tribe (as defined in section 3306(u) of the Internal Revenue Code of 1986 (as added by this section)) shall not be treated as employment (within the meaning of section 3306 of such Code) if—

''(A) it is service which is performed before the date of the enactment of this Act [Dec. 21, 2000] and with respect to which the tax imposed under the Federal Unemployment Tax Act has not been paid, and

''(B) such Indian tribe reimburses a State unemployment fund for unemployment benefits paid for service attributable to such tribe for such period.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5406(b) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] shall apply with respect to service performed after January 1, 1994.''

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

Section 1203(b) of Pub. L. 104–188 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services performed after December 31, 1994.''

Amendment by section 1421(b)(8)(C) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–465 applicable to payments made after Dec. 31, 1996, see section 702(d) of Pub. L. 103–465, set out as a note under section 3304 of this title.

Amendment by Pub. L. 103–296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103–296, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 507(e) of Pub. L. 103–182, as amended by Pub. L. 105–306, § 3, Oct. 28, 1998, 112 Stat. 2926, provided that: ''The provisions of this section [amending this section, section 3304 of this title, and section 503 of Title 42, The Public Health and Welfare, and enacting provisions set out below] and the amendments made by this section shall take effect on the date of the enactment of this Act [Dec. 8, 1993].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 521(b)(35) of Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(a)(22)(C) of Pub. L. 100–647 not applicable to any individual who separated from service with the employer before Jan. 1, 1989, see section 1011B(a)(22)(F) of Pub. L. 100–647, set out as a note under section 3121 of this title.

Section 1018(u)(50) of Pub. L. 100–647 provided that the amendment made by that section is effective Apr. 7, 1986.

Amendment by sections 1001(d)(2)(C)(iii), (g)(4)(B)(ii), and 1011B(a)(23)(A) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 8016(a)(3)(B) of Pub. L. 100–647 effective Nov. 10, 1988, except that any amendment to a provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act [42 U.S.C. 301 et seq.], or to this title as added or amended by a provision of a particular Public Law which is so referred to, effective as though included or reflected in the relevant provisions of that Public Law at the time of its enactment, see section 8016(b) of Pub. L. 100–647, set out as a note under section 3111 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 122(e)(3) of Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1108(g)(8) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1108(h) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1151(d)(2)(B) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1983, see section 1151(k)(5) of Pub. L. 99–514, set out as a note under section 79 of this title.

Amendment by Pub. L. 99–509 effective, except as otherwise provided, with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of Title 42, The Public Health and Welfare, see section 9002(d) of Pub. L. 99–509, set out as a note under section 418 of Title 42.

Amendment by Pub. L. 99–272 applicable to recoveries made on or after Apr. 7, 1986, and applicable with respect to overpayments made before, on, or after such date, see section 12401(c) of Pub. L. 99–272, set out as a note under section 503 of Title 42.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(37) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 531(d)(3) of Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of this title.

Section 1073(b) of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall take effect on January 1, 1986.

''(2) EXCEPTION FOR CERTAIN STATES.—In the case of any State the legislature of which—

''(A) did not meet in a regular session which begins during 1984 and after the date of the enactment of this Act [July 18, 1984], and

''(B) did not meet in a session which began before the date of the enactment of this Act and remained in session for at least 25 calendar days after such date of enactment,

the amendment made by subsection (a) shall take effect on January 1, 1987.''

Section 2661(*o*)(4) of Pub. L. 98–369 provided that the amendment made by that section is effective Jan. 1, 1985.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 201(b) of Pub. L. 98–135 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to remuneration paid after the date of the enactment of this Act [Oct. 24, 1983].''

Amendment by section 324(b)(1)–(4)(B) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1984, except for certain employer contributions made during 1984 under a qualified cash or deferred arrangement, and except in the case of an agreement with certain nonqualified deferred compensation plans in existence on Mar. 24, 1983, see section 324(d) of Pub. L. 98–21 set out as a note under section 3121 of this title.

Amendment by section 327(c)(1)–(3) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1984, see section 327(d)(3) of Pub. L. 98–21, as amended, set out as a note under section 3121 of this title.

Amendment by section 327(c)(4) of Pub. L. 98–21 applicable to remuneration (other than amounts excluded under 26 U.S.C. 119) paid after Mar. 4, 1983, and to any such remuneration paid on or before such date which the employer treated as wages when paid, see section 327(d)(2) of Pub. L. 98–21, as amended, set out as a note under section 3121 of this title.

Amendment by section 328(c) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1984, see section 328(d)(2) of Pub. L. 98–21, set out as a note under section 3121 of this title.

EFFECTIVE AND TERMINATION DATES OF 1982 AMENDMENTS

Amendment by section 271(a) of Pub. L. 97–248 applicable to remuneration paid after Dec. 31, 1982, see section 271(d)(1) of Pub. L. 97–248, as amended, set out as a note under section 3301 of this title.

Section 276(a)(2) of Pub. L. 97–248 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to services performed after the date of the enactment of this Act [Sept. 3, 1982].''

Section 276(b)(3) of Pub. L. 97–248 provided that: ''The amendments made by this subsection [amending this section] shall apply to remuneration paid after December 31, 1982, and before January 1, 1984.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 124(e)(2)(A) of Pub. L. 97–34 applicable to remuneration paid after Dec. 31, 1981, see section 124(f) of Pub. L. 97–34, set out as an Effective Date of 1981 Amendment note under section 21 of this title.

Section 822(b) of Pub. L. 97–34, as amended by Pub. L. 97–362, title II, §203, Oct. 25, 1982, 96 Stat. 1733; Pub. L. 98–369, div. A, title X, §1074, July 18, 1984, 98 Stat. 1053; Pub. L. 99–272, title XIII, §13303(c)(1), Apr. 7, 1986, 100 Stat. 327, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to remuneration paid after December 31, 1980.''

EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96–499, see section 1141(c) of Pub. L. 96–499, set out as a note under section 3121 of this title.

Amendment by Pub. L. 96–222 applicable to payments made on or after Jan. 1, 1979, see section 101(b)(1)(E) of Pub. L. 96–222, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 4(c) of Pub. L. 96–84 provided that: ''The amendments made by this section [amending this section] shall apply to remuneration paid after December 31, 1979, for services performed after such date.''

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–600 applicable with respect to taxable years beginning after Dec. 31, 1978, see section 164(d) of Pub. L. 95–600, set out as an Effective Date note under section 127 of this title.

Amendment by Pub. L. 95–472 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 3(d) of Pub. L. 95–472, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 applicable with respect to wages paid after Dec. 31, 1978, see section 314(c) of Pub. L. 95–216, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 111(c) of Pub. L. 95–566 provided that: ''The amendments made by this section [amending this section] shall apply with respect to remuneration paid after December 31, 1977, for services performed after such date.''

Section 112(b) of Pub. L. 94–566 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to remuneration paid after December 31, 1977, for services performed after such date.''

Section 113(b) of Pub. L. 94–566 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to remuneration paid after December 31, 1977, for services performed after such date.''

Section 114(c) of Pub. L. 94–566 provided that: ''The amendments made by this section [amending this section and section 6157 of this title] shall apply with respect to remuneration paid after December 31, 1977, for services performed after such date.''

Amendment by section 116(b) of Pub. L. 94–566 applicable with respect to remuneration paid after Dec. 31 of the year in which the Secretary of Labor approves for the first time an unemployment compensation law submitted to him by the Virgin Islands for approval, for services performed after such Dec. 31, see section 116(f)(2) of Pub. L. 94–566, set out as a note under section 3304 of this title.

Section 211(d)(1) of Pub. L. 94–566 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to remuneration paid after December 31, 1977.''

EFFECTIVE DATE OF 1970 AMENDMENT

Section 101(c)(1) of Pub. L. 91–373 provided that: ''The amendments made by subsections (a) and (b)(1) [amending this section and section 6157 of this title] shall apply with respect to calendar years beginning after December 31, 1971.''

Section 102(c) of Pub. L. 91–373 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to remuneration paid after December 31, 1971, for services performed after such date.''

Section 103(b) of Pub. L. 91–373 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to remuneration paid after December 31, 1971, for services performed after such date.''

Section 105(c) of Pub. L. 91–373 provided that: ''The amendments made by this section [amending this section] shall apply with respect to service performed after December 31, 1971.''

Section 106(b) of Pub. L. 91–373 provided that: ''Subsection (a) [amending this section] shall apply with respect to remuneration paid after December 31, 1969.''

Section 302 of Pub. L. 91–373 provided that the amendment made by that section is effective with respect to remuneration paid after Dec. 31, 1971.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–53 applicable with respect to calendar years beginning after Dec. 31, 1969, see section 4(a) of Pub. L. 91–53, set out as an Effective Date note under section 6157 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 applicable with respect to remuneration paid after Jan. 2, 1968, see section 504(d) of Pub. L. 90–248, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–650 applicable with respect to remuneration paid on or after first day of first calendar month which begins more than ten days after Oct. 13, 1964, see section 4(d) of Pub. L. 88–650, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–256 applicable with respect to service performed after Dec. 31, 1961, see section 110(h)(3) of Pub. L. 87–256, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment by sections 531(c) and 532 to 534 of Pub. L. 86–778 applicable with respect to remuneration paid after 1961 for services performed after 1961, see section 535 of Pub. L. 86–778, set out as a note under section 3305 of this title.

Section 543(a) of Pub. L. 86–778 provided that the amendment made by that section is effective with respect to remuneration paid after Dec. 31, 1960, for services performed after such date.

Amendment by Pub. L. 86–624 effective on Aug. 21, 1959, see section 18(k) of Pub. L. 86–624, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–70 effective Jan. 3, 1959, see section 22(i) of Pub. L. 86–70, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 1 of act Sept. 1, 1954, provided that the amendment made by that section is effective with respect to services performed after Dec. 31, 1955.

Section 4(c) of act Sept. 1, 1954, provided that the amendment made by that section is effective with respect to services performed after Dec. 31, 1954.

NO INFERENCE TO BE DRAWN FROM AMENDMENT BY PUB. L. 108–121

No inference to be drawn from amendment to subsec. (b)(13) of this section by section 106 of Pub. L. 108–121 with respect to tax treatment of any amounts under program described in section 134(b)(4) of this title for any taxable year beginning before Jan. 1, 2003, see section 106(d) of Pub. L. 108–121, set out as a note under section 134 of this title.

REPORTING REQUIREMENTS

Section 507(c), (d) of Pub. L. 103–182 provided that:

''(c) STATE REPORTS.—Any State operating a self-employment program authorized by the Secretary of Labor under this section [amending this section, section 3304 of this title, and section 503 of Title 42, The Public Health and Welfare, and enacting provisions set out above] shall report annually to the Secretary on the number of individuals who participate in the self-employment assistance program, the number of individuals who are able to develop and sustain businesses, the operating costs of the program, compliance with program requirements, and any other relevant aspects of program operations requested by the Secretary.

''(d) REPORT TO CONGRESS.—Not later than 4 years after the date of the enactment of this Act [Dec. 8, 1993], the Secretary of Labor shall submit a report to the Congress with respect to the operation of the program authorized under this section. Such report shall be based on the reports received from the States pursu-

ant to subsection (c) and include such other information as the Secretary of Labor determines is appropriate.''

EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS

For purposes of this chapter, the term ''wages'' shall not include the amount of any refund required under section 421 of Pub. L. 100–360, 42 U.S.C. 1395b note, see section 10202 of Pub. L. 101–239, set out as a note under section 1395b of Title 42, The Public Health and Welfare.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

APPLICABILITY OF UNEMPLOYMENT COMPENSATION TAX TO CERTAIN SERVICES PERFORMED FOR CERTAIN INDIAN TRIBAL GOVERNMENTS

Section 1705 of Pub. L. 99–514 provided that:

''(a) IN GENERAL.—For purposes of the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.], service performed in the employ of a qualified Indian tribal government shall not be treated as employment (within the meaning of section 3306 of such Act) if it is service—

''(1) which is performed—

''(A) before, on, or after the date of the enactment of this Act [Oct. 22, 1986], but before January 1, 1988, and

''(B) during a period in which the Indian tribal government is not covered by a State unemployment compensation program, and

''(2) with respect to which the tax imposed under the Federal Unemployment Tax Act has not been paid.

''(b) DEFINITION.—For purposes of this section, the term 'qualified Indian tribal government' means an Indian tribal government the service for which is not covered by a State unemployment compensation program on June 11, 1986.''

REMUNERATION PAID AFTER SEPT. 30, 1985, TO FULL-TIME STUDENTS EMPLOYED BY SUMMER CAMPS

Section 13303(b) of Pub. L. 99–272 provided that: ''Notwithstanding paragraph (3) of section 276(b) of the Tax Equity and Fiscal Responsibility Act of 1982 [see Effective Date of 1982 Amendments note above], the amendments made by paragraphs (1) and (2) of such section 276(b) [amending this section] shall also apply to remuneration paid after September 19, 1985.''

ADMINISTRATION OF PROVISIONS COVERING PAYMENTS TO EMPLOYEES ON ACCOUNT OF SICKNESS OR ACCIDENT DISABILITY

Section 324(b)(4)(C) of Pub. L. 98–21 provided that: ''Rules similar to the rules of subsections (d) and (e) of section 3 of the Act entitled 'An Act to amend the Omnibus Reconciliation Act of 1981 to restore minimum benefits under the Social Security Act' (Public Law 97–123), approved December 29, 1981 [set out as notes under section 3121 of this title], shall apply in the administration of section 3306(b)(2)(A) of such Code (as amended by subparagraph (A)).''

APPLICABILITY TO FEDERAL LAND BANKS, FEDERAL INTERMEDIATE CREDIT BANKS, AND BANKS FOR COOPERATIVES

Applicability of subsec. (c)(6) of this section to Federal land banks, Federal intermediate credit banks, and banks for cooperatives, see section 531(g) of Pub. L. 86–778, set out as a note under section 3305 of this title.

§ 3307. Deductions as constructive payments

Whenever under this chapter or any act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

(Aug. 16, 1954, ch. 736, 68A Stat. 454.)

§ 3308. Instrumentalities of the United States

Notwithstanding any other provision of law (whether enacted before or after the enactment of this section) which grants to any instrumentality of the United States an exemption from taxation, such instrumentality shall not be exempt from the tax imposed by section 3301 unless such other provision of law grants a specific exemption, by reference to section 3301 (or the corresponding section of prior law), from the tax imposed by such section.

(Added Pub. L. 86–778, title V, § 531(d)(1), Sept. 13, 1960, 74 Stat. 983.)

REFERENCES IN TEXT

Enacted before or after the enactment of this section, referred to in text, means enacted before or after Sept. 13, 1960, the date of approval of Pub. L. 86–778.

PRIOR PROVISIONS

A prior section 3309 was renumbered section 3311 of this title.

EFFECTIVE DATE

Section applicable with respect to remuneration paid after 1961 for services performed after 1961, see section

535 of Pub. L. 86–778, set out as an Effective Date of 1960 Amendment note under section 3305 of this title.

APPLICABILITY TO FEDERAL LAND BANKS, FEDERAL INTERMEDIATE CREDIT BANKS, AND BANKS FOR COOPERATIVES

Applicability of this section to Federal land banks, Federal intermediate credit banks, and banks for cooperatives, see section 531(g) of Pub. L. 86–778, set out as a note under section 3305 of this title.

§ 3309. State law coverage of services performed for nonprofit organizations or governmental entities

(a) State law requirements

For purposes of section 3304(a)(6)—

(1) except as otherwise provided in subsections (b) and (c), the services to which this paragraph applies are—

(A) service excluded from the term ''employment'' solely by reason of paragraph (8) of section 3306(c), and

(B) service excluded from the term ''employment'' solely by reason of paragraph (7) of section 3306(c); and

(2) the State law shall provide that a governmental entity, including an Indian tribe, or any other organization (or group of governmental entities or other organizations) which, but for the requirements of this paragraph, would be liable for contributions with respect to service to which paragraph (1) applies may elect, for such minimum period and at such time as may be provided by State law, to pay (in lieu of such contributions) into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to such service. The State law may provide safeguards to ensure that governmental entities or other organizations so electing will make the payments required under such elections.

(b) Section not to apply to certain service

This section shall not apply to service performed—

(1) in the employ of (A) a church or convention or association of churches, (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches, or (C) an elementary or secondary school which is operated primarily for religious purposes, which is described in section 501(c)(3), and which is exempt from tax under section 501(a);

(2) 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;

(3) in the employ of a governmental entity referred to in paragraph (7) of section 3306(c), if such service is performed by an individual in the exercise of his duties—

(A) as an elected official;

(B) as a member of a legislative body, or a member of the judiciary, of a State or political subdivision thereof, or of an Indian tribe;

(C) as a member of the State National Guard or Air National Guard;

(D) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

(E) in a position which, under or pursuant to the State or tribal law, is designated as (i) a major nontenured policymaking or advisory position, or (ii) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than 8 hours per week; or

(F) as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than $1,000;

(4) in a facility conducted for the purpose of carrying out a program of—

(A) rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or

(B) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market,

by an individual receiving such rehabilitation or remunerative work;

(5) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any Federal agency or an agency of a State or political subdivision thereof or of an Indian tribe, by an individual receiving such work relief or work training; and

(6) by an inmate of a custodial or penal institution.

(c) Nonprofit organizations must employ 4 or more

This section shall not apply to service performed during any calendar year in the employ of any organization unless on each of some 20 days during such calendar year or the preceding calendar year, each day being in a different calendar week, the total number of individuals who were employed by such organization in employment (determined without regard to section 3306(c)(8) and by excluding service to which this section does not apply by reason of subsection (b)) for some portion of the day (whether or not at the same moment of time) was 4 or more.

(d) Election by Indian tribe

The State law shall provide that an Indian tribe may make contributions for employment as if the employment is within the meaning of section 3306 or make payments in lieu of contributions under this section, and shall provide that an Indian tribe may make separate elections for itself and each subdivision, subsidiary, or business enterprise wholly owned by such Indian tribe. State law may require a tribe to post a payment bond or take other reasonable measures to assure the making of payments in lieu of contributions under this section. Notwithstanding the requirements of section 3306(a)(6), if, within 90 days of having received a notice of delinquency, a tribe fails to make contributions, payments in lieu of contributions, or payment of penalties or interest (at amounts or rates comparable to those applied to all other employers covered under the State law) assessed with re-

spect to such failure, or if the tribe fails to post a required payment bond, then service for the tribe shall not be excepted from employment under section 3306(c)(7) until any such failure is corrected. This subsection shall apply to an Indian tribe within the meaning of section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(Added Pub. L. 91–373, title I, § 104(b)(1), Aug. 10, 1970, 84 Stat. 697; amended Pub. L. 94–566, title I, § 115(a), (b), (c)(2), (3), title V, § 506(a), Oct. 20, 1976, 90 Stat. 2670, 2671, 2687; Pub. L. 95–19, title III, § 302(b), Apr. 12, 1977, 91 Stat. 44; Pub. L. 105–33, title V, §§ 5405(a), 5407(a), Aug. 5, 1997, 111 Stat. 604, 605; Pub. L. 106–554, § 1(a)(7) [title I, § 166(b), (c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–627.)

PRIOR PROVISIONS

A prior section 3309 was renumbered section 3311 of this title.

AMENDMENTS

2000—Subsec. (a)(2). Pub. L. 106–554, § 1(a)(7) [title I, § 166(b)(1)], inserted ", including an Indian tribe," after "the State law shall provide that a governmental entity".

Subsec. (b)(3)(B). Pub. L. 106–554, § 1(a)(7) [title I, § 166(b)(2)], inserted ", or of an Indian tribe" before semicolon at end.

Subsec. (b)(3)(E). Pub. L. 106–554, § 1(a)(7) [title I, § 166(b)(3)], inserted "or tribal" after "the State".

Subsec. (b)(5). Pub. L. 106–554, § 1(a)(7) [title I, § 166(b)(4)], inserted "or of an Indian tribe" after "an agency of a State or political subdivision thereof".

Subsec. (d). Pub. L. 106–554, § 1(a)(7) [title I, § 166(c)], added subsec. (d).

1997—Subsec. (b)(1)(C). Pub. L. 105–33, § 5407(a), added subpar. (C).

Subsec. (b)(3)(F). Pub. L. 105–33, § 5405(a), added subpar. (F).

1977—Subsec. (a)(2). Pub. L. 95–19 substituted "(or group of governmental entities or other organizations)" for "(or group of organizations)".

1976—Pub. L. 94–566, § 115(c)(3), substituted "services performed for nonprofit organizations or governmental entities" for "certain services performed for nonprofit organizations and for State hospitals and institutions of higher education" in section catchline.

Subsec. (a)(1)(B). Pub. L. 94–566, § 115(a), struck out "performed in the employ of the State, or any instrumentality of the State or of the State and one or more other States, for a hospital or institution of higher education located in the State, if such service is" after "service".

Subsec. (a)(2). Pub. L. 94–566, § 506(a), substituted "a governmental entity or any other organization" for "an organization", "paragraph (1)" for "paragraph (1)(A)", and "that governmental entities or other organizations" for "that organizations".

Subsec. (b)(3). Pub. L. 94–566, § 115(b)(1), substituted reference to services performed in the employ of a governmental entity referred to in paragraph (7) of section 3306(c), if such services are performed by an individual in the exercise of his duties as an elected official, as a member of a legislative body, or a member of the judiciary, of a State or political subdivision thereof, as a member of the State National Guard or Air National Guard, as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency, or in a position which, under or pursuant to the State law, is designated as a major nontenured policymaker or advisory position or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than 8 hours per week, for reference to services performed in the employ of a school which is not an institution of higher education.

Subsec. (b)(6). Pub. L. 94–566, § 115(b)(2), substituted "by an inmate of a custodial or penal institution" for "for a hospital in a State prison or other State correctional institution by an inmate of the prison or correctional institution".

Subsec. (d). Pub. L. 94–566, § 115(c)(2), struck out subsec. (d) which defined "institution of higher education". See section 3304(f) of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to service performed on or after Dec. 21, 2000, with transition rule for service performed in the employ of an Indian tribe, see section 166(e) of Pub. L. 106–554, set out as a note under section 3306 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5405(b) of Pub. L. 105–33 provided that: "The amendments made by this section [amending this section] shall apply with respect to service performed after the date of the enactment of this Act [Aug. 5, 1997]."

Section 5407(b) of Pub. L. 105–33 provided that: "The amendments made by this section [amending this section] shall apply with respect to service performed after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1977 AMENDMENT

Section 302(d)(2) of Pub. L. 95–19 provided that: "The amendment made by subsection (b) [amending this section] shall take effect as if included in the amendments made by section 506 of the Unemployment Compensation Amendments of 1976 [which amended this section in 1976, see Effective Date of 1976 Amendment note below]."

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 115(a), (b), (c)(2), (3) of Pub. L. 94–566, see section 115(d) of Pub. L. 94–566, set out as a note under section 3304 of this title.

For effective date of amendment by section 506(a) of Pub. L. 94–566, see section 506(c) of Pub. L. 94–566, set out as a note under section 3304 of this title.

EFFECTIVE DATE

Section applicable with respect to certifications of State laws for 1972 and subsequent years, but only with respect to service performed after Dec. 31, 1971, see section 104(d)(1) of Pub. L. 91–373, set out as a note under section 3304 of this title.

§ 3310. Judicial review

(a) In general

Whenever under section 3303(b) or section 3304(c) the Secretary of Labor makes a finding pursuant to which he is required to withhold a certification with respect to a State under such section, such State may, within 60 days after the Governor of the State has been notified of such action, file with the United States court of appeals for the circuit in which such State is located or with the United States Court of Appeals for the District of Columbia, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Labor. The Secretary of Labor thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28 of the United States Code.

(b) Findings of fact

The findings of fact by the Secretary of Labor, if supported by substantial evidence, shall be

conclusive; but the court, for good cause shown, may remand the case to the Secretary of Labor to take further evidence, and the Secretary of Labor may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) Jurisdiction of court; review

The court shall have jurisdiction to affirm the action of the Secretary of Labor or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

(d) Stay of Secretary of Labor's action

(1) The Secretary of Labor shall not withhold any certification under section 3303(b) or section 3304(c) until the expiration of 60 days after the Governor of the State has been notified of the action referred to in subsection (a) or until the State has filed a petition for review of such action, whichever is earlier.

(2) The commencement of judicial proceedings under this section shall stay the Secretary of Labor's action for a period of 30 days, and the court may thereafter grant interim relief if warranted, including a further stay of the Secretary of Labor's action and including such other relief as may be necessary to preserve status or rights.

(Added Pub. L. 91–373, title I, § 131(b)(1), Aug. 10, 1970, 84 Stat. 703; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(F), (H), Oct. 4, 1976, 90 Stat. 1835; Pub. L. 98–620, title IV, § 402(28)(A), Nov. 8, 1984, 98 Stat. 3359.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98–620 struck out subsec. (e) which had provided that any judicial proceedings under this section were entitled to, and upon request of the Secretary of Labor or of the State would receive, a preference and would be heard and determined as expeditiously as possible.

1976—Subsec. (d)(2). Pub. L. 94–455, § 1906(b)(13)(F), substituted ''the Secretary of Labor's action'' for ''the Secretary's action'' in two places.

Subsec. (e). Pub. L. 94–455, § 1906(b)(13)(H), substituted ''of the Secretary of Labor'' for ''of the Secretary''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 3311. Short title

This chapter may be cited as the ''Federal Unemployment Tax Act.''

(Aug. 16, 1954, ch. 736, 68A Stat. 454, § 3308; renumbered § 3309, Pub. L. 86–778, title V, § 531(d)(1), Sept. 13, 1960, 74 Stat. 983; renumbered § 3311, Pub. L. 91–373, title I, § 104(b)(1), Aug. 10, 1970, 84 Stat. 697.)

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–566, § 1, Oct. 20, 1976, 90 Stat. 2667, provided that: ''This Act [enacting section 603a of Title 42, The Public Health and Welfare, amending section 3304 of this title and provisions set out as notes under sections 3301, 3303, 3304, 3306, 3309, and 6157 of this title, sections 8501, 8503, 8504, 8505, 8506, 8521, and 8522 of Title 5, Government Organization and Employees, sections 49b and 49d of Title 29, Labor, and sections 607, 1101, 1105, 1301, 1321, 1382, 1382a, 1382d, and 1382e of Title 42, and enacting provisions set out as notes under sections 3301, 3303, 3304, and 3306 of this title, sections 8501 and 8506 of Title 5, and sections 607, 1101, 1321, 1382, 1382d, 1382e, and 1396a of Title 42] may be cited as the 'Unemployment Compensation Amendments of 1976'.''

SHORT TITLE OF 1975 AMENDMENT

Pub. L. 94–45, § 1, June 30, 1975, 89 Stat. 236, provided that: ''This Act [amending sections 44 and 3302 of this title and amending provisions set out as notes under sections 44 and 3304 of this title and enacting provisions set out as notes under sections 3302 and 3304 of this title] may be cited as the 'Emergency Compensation and Special Unemployment Assistance Extension Act of 1975'.''

SHORT TITLE OF 1970 AMENDMENT

Section 1 of Pub. L. 91–373 provided: ''That this Act [enacting sections 3309 and 3310 of this title and sections 504, 1106, 1107, and 1108 of Title 42, The Public Health and Welfare, repealing section 8524 of Title 5, Government Organization and Employees, and amending sections 1563, 3301 to 3306, and 6157 of this title, sections 77c and 78c of Title 15, Commerce and Trade, and sections 1101, 1102, 1103, 1105, and 1323 of Title 42, and enacting provisions set out as notes under sections 3301 to 3304, 3306, and 6157 of this title, section 77c of Title 15, and section 1101 of Title 42] may be cited as the 'Employment Security Amendments of 1970'.''

CHAPTER 23A—RAILROAD UNEMPLOYMENT REPAYMENT TAX

Sec.
3321. Imposition of tax.
3322. Definitions.

AMENDMENTS

1990—Pub. L. 101–508, title XI, § 11704(a)(18), Nov. 5, 1990, 104 Stat. 1388–519, substituted ''23A—'' for ''23A.'' in chapter heading.

1988—Pub. L. 100–647, title VII, § 7106(a), Nov. 10, 1988, 102 Stat. 3772, reenacted chapter heading and item 3321 without change, substituted ''Definitions'' for ''Taxable period'' in item 3322, and omitted item 3323 ''Other definitions''.

§ 3321. Imposition of tax

(a) General rule

There is hereby imposed on every rail employer for each calendar month an excise tax, with respect to having individuals in his employ, equal to 4 percent of the total rail wages paid by him during such month.

(b) Tax on employee representatives

(1) In general

There is hereby imposed on the income of each employee representative a tax equal to 4 percent of the rail wages paid to him during the calendar month.

(2) Determination of wages

The rail wages of an employee representative for purposes of paragraph (1) shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were a rail employer.

(c) Termination if loans to railroad unemployment fund repaid

The tax imposed by this section shall not apply to rail wages paid on or after the 1st day of any calendar month if, as of such 1st day, there is—

(1) no balance of transfers made before October 1, 1985, to the railroad unemployment insurance account under section 10(d) of the Railroad Unemployment Insurance Act, and

(2) no unpaid interest on such transfers.

(Added Pub. L. 98–76, title II, § 231(a), Aug. 12, 1983, 97 Stat. 426; amended Pub. L. 99–272, title XIII, § 13301(a), Apr. 7, 1986, 100 Stat. 325; Pub. L. 100–647, title I, § 1018(u)(17), title VIII, § 7106(a), Nov. 10, 1988, 102 Stat. 3590, 3772.)

REFERENCES IN TEXT

Section 10(d) of the Railroad Unemployment Insurance Act, referred to in subsec. (c)(1), is classified to section 360(d) of Title 45, Railroads.

AMENDMENTS

1988—Pub. L. 100–647, § 7106(a), amended section generally, revising and restating provisions of subsecs. (a) and (b) and specifying imposition of 4 percent tax on rail wages rather than a tax based on the ''applicable percentage'' of rail wages, and in subsec. (c) substituting provisions relating to termination if loans to railroad unemployment fund repaid for provisions relating to rates of tax.

Pub. L. 100–647, § 1018(u)(17), added a period at end of par. (4).

1986—Subsec. (c). Pub. L. 99–272 amended subsec. (c) generally. Prior to amendment subsec. (c) read as follows:

''(c) RATE OF TAX.—For purposes of this section—

''(1) FOR TAXABLE PERIOD JULY 1 THROUGH DECEMBER 31, 1986.—The applicable percentage for the taxable period beginning on July 1, 1986, and ending on December 31, 1986, shall be 2 percent.

''(2) SUBSEQUENT TAXABLE PERIODS.—The applicable percentage for any taxable period beginning after 1986 shall be the sum of—

''(A) 2 percent, plus

''(B) 0.3 percent for each preceding taxable period. In no event shall the applicable percentage exceed 5 percent.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1018(u)(17) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 7106(d) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and sections 3322, 6157, 6201, 6317, 6513, and 6601 of this title, omitting section 3323 of this title, and amending provisions set out as a note under section 231n of Title 45, Railroads], and the provisions of subsection (b) [set out below], shall apply to remuneration paid after December 31, 1988.''

EFFECTIVE DATE

Section 231(d) of Pub. L. 98–76 provided that: ''The amendments made by this section [enacting this chapter and amending sections 6157, 6201, 6317, 6513, and 6601 of this title] shall apply to remuneration paid after June 30, 1986.''

CONTINUATION OF SURTAX RATE THROUGH 1990

Section 7106(b) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—In the case of any calendar month beginning before January 1, 1991—

''(A) there shall be substituted for '4 percent' in subsections (a) and (b) of section 3321 of the 1986 Code the percentage equal to the sum of—

''(i) 4 percent, plus

''(ii) the surtax rate (if any) for such calendar month, and

''(B) subsection (c) of such section shall not apply to so much of the tax imposed by such section as is attributable to the surtax rate.

''(2) SURTAX RATE.—For purposes of paragraph (1), the surtax rate shall be—

''(A) 3.5 percent for each month during a calendar year if, as of September 30, of the preceding calendar year, there was a balance of transfers (or unpaid interest thereon) made after September 30, 1985, to the railroad unemployment insurance account under section 10(d) of the Railroad Unemployment Insurance Act [45 U.S.C. 360(d)], and

''(B) zero for any other calendar month.''

§ 3322. Definitions

(a) Rail employer

For purposes of this chapter, the term ''rail employer'' means any person who is an employer as defined in section 1 of the Railroad Unemployment Insurance Act.

(b) Rail wages

For purposes of this chapter, the term ''rail wages'' means, with respect to any calendar month, so much of the remuneration paid during such month which is subject to contributions under section 8(a) of the Railroad Unemployment Insurance Act.

(c) Employee representative

For purposes of this chapter, the term ''employee representative'' has the meaning given such term by section 1 of the Railroad Unemployment Insurance Act.

(d) Certain rules made applicable

For purposes of this chapter, rules similar to the rules of section 3307 and 3308 shall apply.

(Added Pub. L. 98–76, title II, § 231(a), Aug. 12, 1983, 97 Stat. 427; amended Pub. L. 99–272, title XIII, § 13301(d), Apr. 7, 1986, 100 Stat. 327; Pub. L. 100–647, title VII, § 7106(a), Nov. 10, 1988, 102 Stat. 3773.)

REFERENCES IN TEXT

Section 1 of the Railroad Unemployment Insurance Act, referred to in subsecs. (a) and (c), is classified to section 351 of Title 45, Railroads.

Section 8(a) of the Railroad Unemployment Insurance Act, referred to in subsec. (b), is classified to section 358(a) of Title 45.

AMENDMENTS

1988—Pub. L. 100–647 amended section generally, substituting present provisions for former provisions relating to taxable period, which had provided, in subsec. (a), for a general rule and, in subsec. (b), for earlier termination if loans to rail unemployment fund repaid.

1986—Subsec. (a)(2), (3). Pub. L. 99–272, § 13301(d)(1), struck out ''and before 1990, and'' after ''1986'' in par. (2) and struck out par. (3) relating to the period beginning on Jan. 1, 1990, and ending on Sept. 30, 1990.

Subsec. (b). Pub. L. 99–272, § 13301(d)(2), substituted ''The basic rate under section 3321(c)(1)(A) of the tax imposed by section 3321 shall not apply'' for ''The tax imposed by this chapter shall not apply'' in introductory provision, and inserted ''made before October 1, 1985,'' in par. (1).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to remuneration paid after Dec. 31, 1988, see section 7106(d) of

Pub. L. 100–647, set out as a note under section 3321 of this title.

EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS

For purposes of this chapter, the term ''rail wages'' shall not include the amount of any refund required under section 421 of Pub. L. 100–360, 42 U.S.C. 1395b note, see section 10202 of Pub. L. 101–239, set out as a note under section 1395b of Title 42, The Public Health and Welfare.

[§ 3323. Omitted]

Section, added Pub. L. 98–76, title II, § 231(a), Aug. 12, 1983, 97 Stat. 427; amended Pub. L. 99–272, title XIII, § 13301(b), Apr. 7, 1986, 100 Stat. 326, contained definitions, prior to the general amendment of this chapter by Pub. L. 100–647, § 7106(a). See section 3322 of this title.

CHAPTER 24—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

Sec.
3401. Definitions.
3402. Income tax collected at source.
3403. Liability for tax.
3404. Return and payment by governmental employer.
3405. Special rules for pensions, annuities, and certain other deferred income.[1]
3406. Backup withholding.
[3451 to 3456. Repealed.]

AMENDMENTS

1983—Pub. L. 98–67, title I, §§ 102(a), 104(d)(4), Aug. 5, 1983, 97 Stat. 369, 380, added item 3406 and repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Pub. L. 97–248, title III, §§ 307(b)(4), 308(a), Sept. 3, 1982, 96 Stat. 590, 591, provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, the caption of chapter 24 is amended by striking out ''ON WAGES'', items for subchapters A and B are added in analysis, and heading ''Subchapter A—Withholding From Wages'' is added. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§ 301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

§ 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 (including benefits) paid in any medium other than cash; except that such term shall not include remuneration paid—

(1) for active service performed in a month for which such employee is entitled to the benefits of section 112 (relating to certain combat zone compensation of members of the Armed Forces of the United States) to the extent remuneration for such service is excludable from gross income under such section; or

(2) for agricultural labor (as defined in section 3121(g)) unless the remuneration paid for such labor is wages (as defined in section 3121(a)); 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 such services, performed by a nonresident alien individual, as may be designated by regulations prescribed by the Secretary; or

[(7) Repealed. Pub. L. 89–809, title I, § 103(k), Nov. 13, 1966, 80 Stat. 1554]

(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 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

(D) for services for the United States (or any agency thereof) performed by a citizen of the United States within a possession of the United States to the extent the United States

[1] Editorially supplied. Section 3405 added by Pub. L. 97–248 without corresponding amendment of analysis.

(or such agency) withholds taxes on such remuneration pursuant to an agreement with such possession; 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 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 payment, is a plan described in section 403(a); or

(C) for a payment described in section 402(h)(1) and (2) if, at the time of such payment, it is reasonable to believe that the employee will be entitled to an exclusion under such section for payment; or

(D) under an arrangement to which section 408(p) applies; or

(E) under or to an eligible deferred compensation plan which, at the time of such payment, is a plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A),[1] or

(13) pursuant to any provision of law other than section 5(c) or 6(1) of the Peace Corps Act, for service performed as a volunteer or volunteer leader within the meaning of such Act; or

(14) in the form of group-term life insurance on the life of an employee; or

(15) to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 (determined without regard to section 274(n)); or

(16)(A) as tips in any medium other than cash;

(B) as cash tips to an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is $20 or more;[2]

(17) for service described in section 3121(b)(20);[2]

(18) for any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127, 129, 134(b)(4), or 134(b)(5);[2]

(19) for any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 108(f)(4), 117, or 132;[2]

(20) for any medical care reimbursement made to or for the benefit of an employee under a self-insured medical reimbursement plan (within the meaning of section 105(h)(6));[2]

(21) for any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b);[2]

(22) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d); or

(23) for any benefit or payment which is excludable from the gross income of the employee under section 139B(b).

The term ''wages'' includes any amount includible in gross income of an employee under section 409A and payment of such amount shall be treated as having been made in the taxable year in which the amount is so includible.

(b) Payroll period

For purposes of this chapter, 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, semimonthly, monthly, quarterly, semiannual or annual payroll period.

(c) Employee

For purposes of this chapter, the term ''employee'' includes an officer, employee, or elected official of the United States, a State, 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.

(d) Employer

For purposes of this chapter, 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 for such

[1] So in original. The comma probably should be a semicolon.

[2] So in original. Probably should be followed by ''or''.

services, the term ''employer'' (except for purposes of subsection (a)) means the person having control of the payment of such wages, and

(2) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term ''employer'' (except for purposes of subsection (a)) means such person.

(e) Number of withholding exemptions claimed

For purposes of this chapter, the term ''number of withholding exemptions claimed'' means the number of withholding exemptions claimed in a withholding exemption certificate in effect under section 3402(f), or in effect under the corresponding section of prior law, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero.

(f) Tips

For purposes of subsection (a), the term ''wages'' includes tips received by an employee in the course of his employment. Such wages shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received.

(g) Crew leader rules to apply

Rules similar to the rules of section 3121(*o*) shall apply for purposes of this chapter.

(h) Differential wage payments to active duty members of the uniformed services

(1) In general

For purposes of subsection (a), any differential wage payment shall be treated as a payment of wages by the employer to the employee.

(2) Differential wage payment

For purposes of paragraph (1), the term ''differential wage payment'' means any payment which—

(A) is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period of more than 30 days, and

(B) represents all or a portion of the wages the individual would have received from the employer if the individual were performing service for the employer.

(Aug. 16, 1954, ch. 736, 68A Stat. 455; Aug. 9, 1955, ch. 681, 69 Stat. 616; Pub. L. 87–256, § 110(g)(1), Sept. 21, 1961, 75 Stat. 537; Pub. L. 87–293, title II, § 201(c), Sept. 22, 1961, 75 Stat. 625; Pub. L. 87–792, § 7(*l*), Oct. 10, 1962, 76 Stat. 830; Pub. L. 88–272, title II, §§ 204(b), 213(c), Feb. 26, 1964, 78 Stat. 36, 52; Pub. L. 89–97, title III, § 313(d)(1), (2), July 30, 1965, 79 Stat. 383, 384; Pub. L. 89–809, title I, § 103(k), Nov. 13, 1966, 80 Stat. 1554; Pub. L. 92–279, § 2, Apr. 26, 1972, 86 Stat. 125; Pub. L. 93–406, title II, § 2002(g)(7), Sept. 2, 1974, 88 Stat. 970; Pub. L. 94–455, title XII, § 1207(e)(1)(C), title XV, § 1501(b)(7), title XIX, §§ 1903(c), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1707, 1736, 1810, 1834; Pub. L. 95–600, title I, § 164(b)(1), Nov. 6, 1978, 92 Stat. 2813; Pub. L. 95–615, § 207(a), Nov. 8, 1978, 92 Stat. 3108; Pub. L. 96–222, title I, § 103(a)(13)(A), Apr. 1, 1980, 94 Stat. 213; Pub. L. 97–34, title I, §§ 112(b)(5), 124(e)(2)(A), title III, § 311(h)(6), Aug. 13, 1981, 95 Stat. 195, 200, 282; Pub. L. 97–448, title I, § 103(c)(12)(B), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98–369, div. A, title IV, § 491(d)(38), title V, § 531(d)(4), July 18, 1984, 98 Stat. 851, 885; Pub. L. 99–514, title I, § 122(e)(4), title XII, § 1272(c), Oct. 22, 1986, 100 Stat. 2112, 2594; Pub. L. 100–647, title I, §§ 1001(g)(4)(B)(iii), 1011(f)(9), 1011B(a)(22)(D), (33), Nov. 10, 1988, 102 Stat. 3352, 3463, 3486, 3488; Pub. L. 101–140, title II, § 203(a)(2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VII, § 7631(a), (b), Dec. 19, 1989, 103 Stat. 2378; Pub. L. 101–508, title XI, § 11703(f)(1), Nov. 5, 1990, 104 Stat. 1388–517; Pub. L. 104–117, § 1(c), Mar. 20, 1996, 110 Stat. 828; Pub. L. 104–188, title I, §§ 1421(b)(8)(D), 1704(t)(4)(C), Aug. 20, 1996, 110 Stat. 1798, 1887; Pub. L. 104–191, title III, § 301(c)(2)(C), Aug. 21, 1996, 110 Stat. 2049; Pub. L. 105–206, title VI, § 6023(14), (15), July 22, 1998, 112 Stat. 825; Pub. L. 107–16, title VI, § 641(a)(1)(D)(i), June 7, 2001, 115 Stat. 119; Pub. L. 108–121, title I, § 106(b)(4), Nov. 11, 2003, 117 Stat. 1339; Pub. L. 108–173, title XII, § 1201(d)(2)(C), Dec. 8, 2003, 117 Stat. 2477; Pub. L. 108–357, title III, § 320(b)(4), title VIII, § 885(b)(2), Oct. 22, 2004, 118 Stat. 1473, 1639; Pub. L. 108–375, div. A, title V, § 585(b)(2)(D), Oct. 28, 2004, 118 Stat. 1932; Pub. L. 109–135, title IV, § 412(tt), Dec. 21, 2005, 119 Stat. 2640; Pub. L. 110–245, title I, §§ 105(a)(1), 115(c), June 17, 2008, 122 Stat. 1628, 1637.)

REFERENCES IN TEXT

Sections 5(c) and 6(1) of the Peace Corps Act, referred to in subsec. (a)(13), are classified to sections 2504(c) and 2505(1), respectively, of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2008—Subsec. (a)(23). Pub. L. 110–245, § 115(c), added par. (23).

Subsec. (h). Pub. L. 110–245, § 105(a)(1), added subsec. (h).

2005—Subsecs. (g), (h). Pub. L. 109–135 redesignated subsec. (h) as (g).

2004—Subsec. (a). Pub. L. 108–357, § 885(b)(2), inserted concluding provisions.

Subsec. (a)(18). Pub. L. 108–375 substituted ''134(b)(4), or 134(b)(5)'' for ''or 134(b)(4)''.

Subsec. (a)(19). Pub. L. 108–357, § 320(b)(4), inserted ''108(f)(4),'' after ''74(c),''.

2003—Subsec. (a)(18). Pub. L. 108–121 substituted '', 129, or 134(b)(4)'' for ''or 129''.

Subsec. (a)(22). Pub. L. 108–173 added par. (22).

2001—Subsec. (a)(12)(E). Pub. L. 107–16 added subpar. (E).

1998—Subsec. (a)(19), (21). Pub. L. 105–206 inserted ''for'' after par. designation.

1996—Subsec. (a)(1). Pub. L. 104–188, § 1704(t)(4)(C), substituted ''combat zone compensation'' for ''combat pay''.

Pub. L. 104–117 inserted before semicolon ''to the extent remuneration for such service is excludable from gross income under such section''.

Subsec. (a)(12)(D). Pub. L. 104–188, § 1421(b)(8)(D), added subpar. (D).

Subsec. (a)(21). Pub. L. 104–191 added par. (21).

1990—Subsec. (a)(20). Pub. L. 101–508 added par. (20).

1989—Subsec. (a)(2). Pub. L. 101–239, § 7631(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''for agricultural labor (as defined in section 3121(g)); or''.

Subsec. (g). Pub. L. 101–140 amended this section to read as if amendments by Pub. L. 100–647, §1011B(a)(22)(D), had not been enacted, see 1988 Amendment note below.

Subsec. (h). Pub. L. 101–239, §7631(b), added subsec. (h).

1988—Subsec. (a)(12)(C). Pub. L. 100–647, §1011(f)(9), substituted ''section 402(h)(1) and (2)'' for ''section 219'' and ''an exclusion'' for ''a deduction''.

Subsec. (a)(15). Pub. L. 100–647, §1001(g)(4)(B)(iii), inserted ''(determined without regard to section 274(n))'' after ''section 217''.

Subsec. (a)(19), (20). Pub. L. 100–647, §1011B(a)(33), redesignated par. (20) as (19) and struck out former par. (19) which excluded medical care reimbursement made to or for benefit of employee under self-insured medical reimbursement plan.

Subsec. (g). Pub. L. 100–647, §1011B(a)(22)(D), added subsec. (g) relating to benefits provided under certain employee benefit plans.

1986—Subsec. (a)(8)(D). Pub. L. 99–514, §1272(c), added subpar. (D).

Subsec. (a)(20). Pub. L. 99–514, §122(e)(4), inserted reference to section 74(c).

1984—Subsec. (a). Pub. L. 98–369, §531(d)(4)(A), inserted ''(including benefits)'' in introductory provisions.

Subsec. (a)(12). Pub. L. 98–369, §491(d)(38), struck out subpar. (C) which provided: ''under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a);'' and redesignated subpar. (D) as (C).

Subsec. (a)(20). Pub. L. 98–369, §531(d)(4)(B), added par. (20).

1983—Subsec. (a)(12)(D). Pub. L. 97–448 substituted ''section 219'' for ''section 219(a)''.

1981—Subsec. (a)(12)(D). Pub. L. 97–34, §311(h)(6), substituted ''section 219(a)'' for ''section 219(a) or 220(a)''.

Subsec. (a)(18). Pub. L. 97–34, §124(e)(2)(A), substituted ''section 127 or 129'' for ''section 127''.

Pub. L. 97–34, §112(b)(5), redesignated par. (19) as (18). Former par. (18), relating to remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it was reasonable to believe that a corresponding deduction was allowable under section 913 (relating to deduction for certain expenses of living abroad), was struck out.

Subsec. (a)(19), (20). Pub. L. 97–34, §112(b)(5), redesignated par. (20) as (19). Former par. (19) redesignated (18).

1980—Subsec. (a)(18) to (20). Pub. L. 96–222 redesignated par. (18), added by Pub. L. 95–600, as (19), in par. (19) as so redesignated, substituted ''section 127; or'' for ''section 124.'', and added par. (20).

1978—Subsec. (a)(18). Pub. L. 95–615 added par. (18) relating to payments or benefits excludable from income under section 124.

Pub. L. 95–600 added par. (18) relating to remuneration for which a corresponding deduction is allowable under section 913.

1976—Subsec. (a)(6). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(12)(D). Pub. L. 94–455, §1501(b)(7), inserted ''or 220(a)'' after ''section 219(a)''.

Subsec. (a)(17). Pub. L. 94–455, §1207(e)(1)(C), added par. (17).

Subsec. (c). Pub. L. 94–455, §1903(c), struck out ''Territory'' after ''a State''.

1974—Subsec. (a)(12)(D). Pub. L. 93–406 added subpar. (D).

1972—Subsec. (a)(1). Pub. L. 92–279 struck out ''as a member of the Armed Forces of the United States'' after ''active service'', substituted ''employee'' for ''member'', and parenthetical text ''(relating to certain combat pay of members of the Armed Forces of the United States)''.

1966—Subsec. (a)(6), (7). Pub. L. 89–809, §103(k), struck out par. (6) dealing with services performed by nonresident alien individuals other than residents of contiguous countries who enter and leave the United States at frequent intervals, residents of Puerto Rico if such services are performed as an employee of the United States or any agency thereof, or individuals temporarily present in the United States as nonimmigrants under certain conditions, redesignated par. (7) as (6), and in par (6) as so redesignated, struck out ''who is a resident of a contiguous country and who enters and leaves the United States at frequent intervals'' after ''nonresident alien individual''.

1965—Subsec. (a)(16). Pub. L. 89–97, §313(d)(2), added par. (16).

Subsec. (f). Pub. L. 89–97, §313(d)(1), added subsec. (f).

1964—Subsec. (a)(14). Pub. L. 88–272, §204(b), added par. (14).

Subsec. (a)(15). Pub. L. 88–272, §213(c), added par. (15).

1962—Subsec. (a)(12)(B), (C). Pub. L. 87–792 substituted ''is a plan described in section 403(a)'' for ''meets the requirements of section 401(a)(3), (4), (5), and (6)'', in subpar. (B), and added subpar. (C).

1961—Subsec. (a)(6)(C). Pub. L. 87–256 added subpar. (C).

Subsec. (a)(13). Pub. L. 87–293 added par. (13).

1955—Subsec. (a). Act Aug. 9, 1955, excluded from definition of wages, 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.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–245, title I, §105(a)(2), June 17, 2008, 122 Stat. 1628, provided that: ''The amendment made by this subsection [amending this section] shall apply to remuneration paid after December 31, 2008.''

Amendment by section 115(c) of Pub. L. 110–245 effective as if included in section 5 of Pub. L. 110–142, see section 115(d) of Pub. L. 110–245, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by Pub. L. 108–375 applicable to travel benefits provided after Oct. 28, 2004, see section 585(b)(3) of Pub. L. 108–375, set out as a note under section 134 of this title.

Amendment by section 320(b)(4) of Pub. L. 108–357 applicable to amounts received by an individual in taxable years beginning after Dec. 31, 2003, see section 320(c) of Pub. L. 108–357, set out as a note under section 108 of this title.

Amendment by section 885(b)(2) of Pub. L. 108–357 applicable to amounts deferred after Dec. 31, 2004, with special rules relating to earnings and material modifications and exception for nonelective deferred compensation, see section 885(d) of Pub. L. 108–357, set out as an Effective Date note under section 409A of this title.

EFFECTIVE DATE OF 2003 AMENDMENTS

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

Amendment by Pub. L. 108–121 applicable to taxable years beginning after Dec. 31, 2002, see section 106(c) of Pub. L. 108–121, set out as a note under section 134 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

Amendment by section 1421(b)(8)(D) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31,

1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Amendment by Pub. L. 104–117 applicable to remuneration paid after Mar. 20, 1996, see section 1(e) of Pub. L. 104–117, set out in a Treatment of Certain Individuals Performing Services in Certain Hazardous Duty Areas; Effective Date note under section 112 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11703(f)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply as if included in the amendments made by section 1151 of the Tax Reform Act of 1986 [Pub. L. 99–514, see Effective Date of 1986 Amendment note set out under section 79 of this title] but shall not apply to any amount paid before the date of the enactment of this Act [Nov. 5, 1990] which the employer treated as wages for purposes of chapter 24 of the Internal Revenue Code of 1986 when paid.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 7631(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section] shall apply to remuneration paid after December 31, 1989.''

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1001(g)(4)(B)(iii), 1011(f)(9), and 1011B(a)(33) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 1011B(a)(22)(D) of Pub. L. 100–647 not applicable to any individual who separated from service with the employer before Jan. 1, 1989, see section 1011B(a)(22)(F) of Pub. L. 100–647, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 122(e)(4) of Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1272(c) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(38) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 531(d)(4) of Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 112(b)(5) of Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

Amendment by section 124(e)(2)(A) of Pub. L. 97–34 applicable to remuneration paid after Dec. 31, 1981, see section 124(f)(2) of Pub. L. 97–34, set out as a note under section 21 of this title.

Amendment by section 311(h)(6) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97–34, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–615 applicable to remuneration paid after Nov. 8, 1978, but with taxpayers allowed to elect not to have the amendment apply with respect to any taxable year beginning after Dec. 31, 1977, and before Jan. 1, 1979, see section 209(b), (c) of Pub. L. 95–615, set out as a note under section 911 of this title.

Amendment by Pub. L. 95–600 applicable with respect to taxable years beginning after Dec. 31, 1978, see section 164(d) of Pub. L. 95–600, set out as a note under section 127 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1501(b)(7) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94–455, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 effective on Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93–406, set out as an Effective Date note under section 4973 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 3(b) of Pub. L. 92–279 provided that: ''The amendments made by section 2 [amending this section] shall apply to wages paid on or after the first day of the first calendar month which begins more than 30 days after the date of the enactment of this Act [Apr. 26, 1972].''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to remuneration paid after Dec. 31, 1966, see section 103(n)(4) of Pub. L. 89–809, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 313(d)(1), (2) of Pub. L. 89–97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89–97, set out as a note under section 6053 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 204(b) of Pub. L. 88–272 applicable to remuneration paid after Dec. 31, 1963, in the form of group-term life insurance provided after such date, see section 204(d) of Pub. L. 88–272, set out as an Effective Date note under section 79 of this title.

Amendment by section 213(c) of Pub. L. 88–272 applicable to remuneration paid after the seventh day following Feb. 26, 1964, see section 213(d) of Pub. L. 88–272, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1961 AMENDMENTS

Amendment by Pub. L. 87–293 applicable with respect to remuneration paid after Sept. 22, 1961, see section 201(d) of Pub. L. 87–293, set out as a note under section 912 of this title.

Section 110(h)(4) of Pub. L. 87–256 provided that: ''The amendments made by subsection (g) of this section [amending this section and section 3402 of this title] shall apply with respect to wages paid after December 31, 1961.''

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89–368, § 1, Mar. 15, 1966, 80 Stat. 38, provided that: ''This Act [enacting sections 276 and 6682 of this title and section 428 of Title 42, The Public Health and Welfare, amending sections 1402, 1403, 3402, 4061, 4251, 4253, 6015, 6154, 6211, 6412, 6654, 7205, and 7701 of this title and section 1202 of Title 19, Customs Duties, and enacting provisions set out as notes under sections 276, 3402, 4061, 4251, 6154, and 6654 of this title and section 428 of Title 42] may be cited as the 'Tax Adjustment Act of 1966'.''

REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 201(c) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

NO INFERENCE TO BE DRAWN FROM AMENDMENT BY PUB. L. 108–121

No inference to be drawn from amendment to subsec. (a)(18) of this section by section 106 of Pub. L. 108–121 with respect to tax treatment of any amounts under program described in section 134(b)(4) of this title for any taxable year beginning before Jan. 1, 2003, see section 106(d) of Pub. L. 108–121, set out as a note under section 134 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

CONTROVERSIES INVOLVING WHETHER INDIVIDUALS ARE EMPLOYEES FOR PURPOSES OF EMPLOYMENT TAXES

Pub. L. 95–600, title V, § 530, Nov. 6, 1978, 92 Stat. 2885, as amended by Pub. L. 96–167, § 9(d), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 96–541, § 1, Dec. 17, 1980, 94 Stat. 3204; Pub. L. 97–248, title II, § 269(c)(1), (2), 96 Stat. 552; Pub. L. 99–514, § 2, title XVII, § 1706(a), Oct. 22, 1986, 100 Stat. 2095, 2781; Pub. L. 104–188, title I, § 1122(a), Aug. 20, 1996, 110 Stat. 1766; Pub. L. 109–280, title VIII, § 864(a), Aug. 17, 2006, 120 Stat. 1024; Pub. L. 110–458, title I, § 108(m), Dec. 23, 2008, 122 Stat. 5110, provided that:

''(a) TERMINATION OF CERTAIN EMPLOYMENT TAX LIABILITY.—

''(1) IN GENERAL.—If—

''(A) for purposes of employment taxes, the taxpayer did not treat an individual as an employee for any period, and

''(B) in the case of periods after December 31, 1978, all Federal tax returns (including information returns) required to be filed by the taxpayer with respect to such individual for such period are filed on a basis consistent with the taxpayer's treatment of such individual as not being an employee,

then, for purposes of applying such taxes for such period with respect to the taxpayer, the individual shall be deemed not to be an employee unless the taxpayer had no reasonable basis for not treating such individual as an employee.

''(2) STATUTORY STANDARDS PROVIDING ONE METHOD OF SATISFYING THE REQUIREMENTS OF PARAGRAPH (1).—For purposes of paragraph (1), a taxpayer shall in any case be treated as having a reasonable basis for not treating an individual as an employee for a period if the taxpayer's treatment of such individual for such period was in reasonable reliance on any of the following:

''(A) judicial precedent, published rulings, technical advice with respect to the taxpayer, or a letter ruling to the taxpayer;

''(B) a past Internal Revenue Service audit of the taxpayer in which there was no assessment attributable to the treatment (for employment tax purposes) of the individuals holding positions substantially similar to the position held by this individual; or

''(C) long-standing recognized practice of a significant segment of the industry in which such individual was engaged.

''(3) CONSISTENCY REQUIRED IN THE CASE OF PRIOR TAX TREATMENT.—Paragraph (1) shall not apply with respect to the treatment of any individual for employment tax purposes for any period ending after December 31, 1978, if the taxpayer (or a predecessor) has treated any individual holding a substantially similar position as an employee for purposes of the employment taxes for any period beginning after December 31, 1977.

''(4) REFUND OR CREDIT OF OVERPAYMENT.—If refund or credit of any overpayment of an employment tax resulting from the application of paragraph (1) is not barred on the date of the enactment of this Act [Nov. 6, 1978] by any law or rule of law, the period for filing a claim for refund or credit of such overpayment (to the extent attributable to the application of paragraph (1)) shall not expire before the date 1 year after the date of the enactment of this Act.

''(b) PROHIBITION AGAINST REGULATIONS AND RULINGS ON EMPLOYMENT STATUS.—No regulation or Revenue Ruling shall be published on or after the date of the enactment of this Act [Nov. 6, 1978] and before the effective date of any law hereafter enacted clarifying the employment status of individuals for purposes of the employment taxes by the Department of the Treasury (including the Internal Revenue Service) with respect to the employment status of any individual for purposes of the employment taxes.

''(c) DEFINITIONS.—For purposes of this section—

''(1) EMPLOYMENT TAX.—The term 'employment tax' means any tax imposed by subtitle C of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, section 3101 et seq. of this title].

''(2) EMPLOYMENT STATUS.—The term 'employment status' means the status of an individual, under the usual common law rules applicable in determining the employer-employee relationship, as an employee or as an independent contractor (or other individual who is not an employee).

''(d) EXCEPTION.—This section shall not apply in the case of an individual who, pursuant to an arrangement between the taxpayer and another person, provides services for such other person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work.

''(e) SPECIAL RULES FOR APPLICATION OF SECTION.—

''(1) NOTICE OF AVAILABILITY OF SECTION.—An officer or employee of the Internal Revenue Service shall, before or at the commencement of any audit inquiry relating to the employment status of one or more individuals who perform services for the taxpayer, provide the taxpayer with a written notice of the provisions of this section.

''(2) RULES RELATING TO STATUTORY STANDARDS.—For purposes of subsection (a)(2)—

''(A) a taxpayer may not rely on an audit commenced after December 31, 1996, for purposes of sub-

paragraph (B) thereof unless such audit included an examination for employment tax purposes of whether the individual involved (or any individual holding a position substantially similar to the position held by the individual involved) should be treated as an employee of the taxpayer,

''(B) in no event shall the significant segment requirement of subparagraph (C) thereof be construed to require a reasonable showing of the practice of more than 25 percent of the industry (determined by not taking into account the taxpayer), and

''(C) in applying the long-standing recognized practice requirement of subparagraph (C) thereof—

''(i) such requirement shall not be construed as requiring the practice to have continued for more than 10 years, and

''(ii) a practice shall not fail to be treated as long-standing merely because such practice began after 1978.

''(3) AVAILABILITY OF SAFE HARBORS.—Nothing in this section shall be construed to provide that subsection (a) only applies where the individual involved is otherwise an employee of the taxpayer.

''(4) BURDEN OF PROOF.—

''(A) IN GENERAL.—If—

''(i) a taxpayer establishes a prima facie case that it was reasonable not to treat an individual as an employee for purposes of this section, and

''(ii) the taxpayer has fully cooperated with reasonable requests from the Secretary of the Treasury or his delegate,

then the burden of proof with respect to such treatment shall be on the Secretary.

''(B) EXCEPTION FOR OTHER REASONABLE BASIS.—In the case of any issue involving whether the taxpayer had a reasonable basis not to treat an individual as an employee for purposes of this section, subparagraph (A) shall only apply for purposes of determining whether the taxpayer meets the requirements of subparagraph (A), (B), or (C) of subsection (a)(2).

''(5) PRESERVATION OF PRIOR PERIOD SAFE HARBOR.—If—

''(A) an individual would (but for the treatment referred to in subparagraph (B)) be deemed not to be an employee of the taxpayer under subsection (a) for any prior period, and

''(B) such individual is treated by the taxpayer as an employee for employment tax purposes for any subsequent period,

then, for purposes of applying such taxes for such prior period with respect to the taxpayer, the individual shall be deemed not to be an employee.

''(6) SUBSTANTIALLY SIMILAR POSITION.—For purposes of this section, the determination as to whether an individual holds a position substantially similar to a position held by another individual shall include consideration of the relationship between the taxpayer and such individuals.

''(f) TREATMENT OF TEST ROOM SUPERVISORS AND PROCTORS WHO ASSIST IN THE ADMINISTRATION OF COLLEGE ENTRANCE AND PLACEMENT EXAMS.—

''(1) IN GENERAL.—In the case of an individual described in paragraph (2) who is providing services as a test proctor or room supervisor by assisting in the administration of college entrance or placement examinations, this section shall be applied to such services performed after December 31, 2006 (and remuneration paid for such services) without regard to subsection (a)(3) thereof.

''(2) APPLICABILITY.—An individual is described in this paragraph if the individual—

''(A) is providing the services described in subsection (a) to an organization described in section 501(c), and exempt from tax under section 501(a), of the Internal Revenue Code of 1986, and

''(B) is not otherwise treated as an employee of such organization for purposes of subtitle C of such Code (relating to employment taxes).''

[Pub. L. 109–280, title VIII, § 864(b), Aug. 17, 2006, 120 Stat. 1024, provided that: ''The amendment made by this section [amending section 530 of Pub. L. 95–600, set out above] shall apply to remuneration for services performed after December 31, 2006.'']

[Section 1122(b) of Pub. L. 104–188 provided that:

[''(1) IN GENERAL.—The amendment made by this section [amending section 530 of Pub. L. 95–600, set out above] shall apply to periods after December 31, 1996.

[''(2) NOTICE BY INTERNAL REVENUE SERVICE.—Section 530(e)(1) of the Revenue Act of 1978 [Pub. L. 95–600] (as added by subsection (a)) shall apply to audits which commence after December 31, 1996.

[''(3) BURDEN OF PROOF.—

[''(A) IN GENERAL.—Section 530(e)(4) of the Revenue Act of 1978 (as added by subsection (a)) shall apply to disputes involving periods after December 31, 1996.

[''(B) NO INFERENCE.—Nothing in the amendments made by this section shall be construed to infer the proper treatment of the burden of proof with respect to disputes involving periods before January 1, 1997.'']

[Section 1706(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending section 530 of Pub. L. 95–600, set out above] shall apply to remuneration paid and services rendered after December 31, 1986.'']

§ 3402. Income tax collected at source

(a) Requirement of withholding

(1) In general

Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary. Any tables or procedures prescribed under this paragraph shall—

(A) apply with respect to the amount of wages paid during such periods as the Secretary may prescribe, and

(B) be in such form, and provide for such amounts to be deducted and withheld, as the Secretary determines to be most appropriate to carry out the purposes of this chapter and to reflect the provisions of chapter 1 applicable to such periods.

(2) Amount of wages

For purposes of applying tables or procedures prescribed under paragraph (1), the term ''the amount of wages'' means the amount by which the wages exceed the number of withholding exemptions claimed multiplied by the amount of one such exemption. The amount of each withholding exemption shall be equal to the amount of one personal exemption provided in section 151(b), prorated to the payroll period. The maximum number of withholding exemptions permitted shall be calculated in accordance with regulations prescribed by the Secretary under this section, taking into account any reduction in withholding to which an employee is entitled under this section.

(b) Percentage method of withholding

(1) If wages are paid with respect to a period which is not a payroll period, the withholding exemption allowable with respect to each payment of such wages shall be the exemption allowed for a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

(2) In any case in which wages are paid by an employer without regard to any payroll period

or other period, the withholding exemption allowable with respect to each payment of such wages shall be the exemption allowed for a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(3) In any case in which the period, or the time described in paragraph (2), in respect of any wages is less than one week, the Secretary, under regulations prescribed by him, may authorize an employer to compute the tax to be deducted and withheld as if the aggregate of the wages paid to the employee during the calendar week were paid for a weekly payroll period.

(4) In determining the amount to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar.

(c) Wage bracket withholding

(1) At the election of the employer with respect to any employee, the employer shall deduct and withhold upon the wages paid to such employee a tax (in lieu of the tax required to be deducted and withheld under subsection (a)) determined in accordance with tables prescribed by the Secretary in accordance with paragraph (6).

(2) If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

(3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(4) In any case in which the period, or the time described in paragraph (3), in respect of any wages is less than one week, the Secretary, under regulations prescribed by him, may authorize an employer to determine the amount to be deducted and withheld under the tables applicable in the case of a weekly payroll period, in which case the aggregate of the wages paid to the employee during the calendar week shall be considered the weekly wages.

(5) If the wages exceed the highest wage bracket, in determining the amount to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar.

(6) In the case of wages paid after December 31, 1969, the amount deducted and withheld under paragraph (1) shall be determined in accordance with tables prescribed by the Secretary. In the tables so prescribed, the amounts set forth as amounts of wages and amounts of income tax to be deducted and withheld shall be computed on the basis of the table for an annual payroll period prescribed pursuant to subsection (a).

(d) Tax paid by recipient

If the employer, in violation of the provisions of this chapter, fails to deduct and withhold the tax under this chapter, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer; but this subsection shall in no case relieve the employer from liability for any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

(e) Included and excluded wages

If the remuneration paid by an employer to an employee for services performed during one-half or more of any payroll period of not more than 31 consecutive days constitutes wages, all the remuneration paid by such employer to such employee for such period shall be deemed to be wages; but if the remuneration paid by an employer to an employee for services performed during more than one-half of any such payroll period does not constitute wages, then none of the remuneration paid by such employer to such employee for such period shall be deemed to be wages.

(f) Withholding exemptions

(1) In general

An employee receiving wages shall on any day be entitled to the following withholding exemptions:

(A) an exemption for himself unless he is an individual described in section 151(d)(2);

(B) if the employee is married, any exemption to which his spouse is entitled, or would be entitled if such spouse were an employee receiving wages, under subparagraph (A) or (D), but only if such spouse does not have in effect a withholding exemption certificate claiming such exemption;

(C) an exemption for each individual with respect to whom, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151(c) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;

(D) any allowance to which he is entitled under subsection (m), but only if his spouse does not have in effect a withholding exemption certificate claiming such allowance; and

(E) a standard deduction allowance which shall be an amount equal to one exemption (or more than one exemption if so prescribed by the Secretary) unless (i) he is married (as determined under section 7703) and his spouse is an employee receiving wages subject to withholding or (ii) he has withholding exemption certificates in effect with respect to more than one employer.

For purposes of this title, any standard deduction allowance under subparagraph (E) shall be treated as if it were denominated a withholding exemption.

(2) Exemption certificates

(A) On commencement of employment

On or before the date of the commencement of employment with an employer, the employee shall furnish the employer with a signed withholding exemption certificate relating to the number of withholding exemptions which he claims, which shall in no event exceed the number to which he is entitled.

(B) Change of status

If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is less than the number of withholding exemptions claimed by the employee on the withholding exemption certificate then in effect with respect to him, the employee shall within 10 days thereafter furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day. If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is greater than the number of withholding exemptions claimed, the employee may furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day.

(C) Change of status which affects next calendar year

If on any day during the calendar year the number of withholding exemptions to which the employee will be, or may reasonably be expected to be, entitled at the beginning of his next taxable year under subtitle A is different from the number to which the employee is entitled on such day, the employee shall, in such cases and at such times as the Secretary may by regulations prescribe, furnish the employer with a withholding exemption certificate relating to the number of withholding exemptions which he claims with respect to such next taxable year, which shall in no event exceed the number to which he will be, or may reasonably be expected to be, so entitled.

(3) When certificate takes effect

(A) First certificate furnished

A withholding exemption certificate furnished the employer in cases in which no previous such certificate is in effect shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished.

(B) Furnished to take place of existing certificate

(i) In general

Except as provided in clauses (ii) and (iii), a withholding exemption certificate furnished to the employer in cases in which a previous such certificate is in effect shall take effect as of the beginning of the 1st payroll period ending (or the 1st payment of wages made without regard to a payroll period) on or after the 30th day after the day on which such certificate is so furnished.

(ii) Employer may elect earlier effective date

At the election of the employer, a certificate described in clause (i) may be made effective beginning with any payment of wages made on or after the day on which the certificate is so furnished and before the 30th day referred to in clause (i).

(iii) Change of status which affects next year

Any certificate furnished pursuant to paragraph (2)(C) shall not take effect, and may not be made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished.

(4) Period during which certificate remains in effect

A withholding exemption certificate which takes effect under this subsection, or which on December 31, 1954, was in effect under the corresponding subsection of prior law, shall continue in effect with respect to the employer until another such certificate takes effect under this subsection.

(5) Form and contents of certificate

Withholding exemption certificates shall be in such form and contain such information as the Secretary may by regulations prescribe.

(6) Exemption of certain nonresident aliens

Notwithstanding the provisions of paragraph (1), a nonresident alien individual (other than an individual described in section 3401(a)(6)(A) or (B)) shall be entitled to only one withholding exemption.

(7) Exemption where certificate with another employer is in effect

If a withholding exemption certificate is in effect with respect to one employer, an employee shall not be entitled under a certificate in effect with any other employer to any withholding exemption which he has claimed under such first certificate.

(g) Overlapping pay periods, and payment by agent or fiduciary

If a payment of wages is made to an employee by an employer—

(1) with respect to a payroll period or other period, any part of which is included in a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(2) without regard to any payroll period or other period, but on or prior to the expiration of a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(3) with respect to a period beginning in one and ending in another calendar year, or

(4) through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of, or pays, the wages payable by another employer to such employee,

the manner of withholding and the amount to be deducted and withheld under this chapter shall be determined in accordance with regulations prescribed by the Secretary under which the withholding exemption allowed to the employee in any calendar year shall approximate the withholding exemption allowable with respect to an annual payroll period.

(h) Alternative methods of computing amount to be withheld

The Secretary may, under regulations prescribed by him, authorize—

(1) Withholding on basis of average wages

An employer—

(A) to estimate the wages which will be paid to any employee in any quarter of the calendar year,

(B) to determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter as if the appropriate average of the wages so estimated constituted the actual wages paid, and

(C) to deduct and withhold upon any payment of wages to such employee during such quarter (and, in the case of tips referred to in subsection (k), within 30 days thereafter) such amount as may be necessary to adjust the amount actually deducted and withheld upon the wages of such employee during such quarter to the amount required to be deducted and withheld during such quarter without regard to this subsection.

(2) Withholding on basis of annualized wages

An employer to determine the amount of tax to be deducted and withheld upon a payment of wages to an employee for a payroll period by—

(A) multiplying the amount of an employee's wages for a payroll period by the number of such payroll periods in the calendar year,

(B) determining the amount of tax which would be required to be deducted and withheld upon the amount determined under subparagraph (A) if such amount constituted the actual wages for the calendar year and the payroll period of the employee were an annual payroll period, and

(C) dividing the amount of tax determined under subparagraph (B) by the number of payroll periods (described in subparagraph (A)) in the calendar year.

(3) Withholding on basis of cumulative wages

An employer, in the case of any employee who requests to have the amount of tax to be withheld from his wages computed on the basis of his cumulative wages, to—

(A) add the amount of the wages to be paid to the employee for the payroll period to the total amount of wages paid by the employer to the employee during the calendar year,

(B) divide the aggregate amount of wages computed under subparagraph (A) by the number of payroll periods to which such aggregate amount of wages relates,

(C) compute the total amount of tax that would have been required to be deducted and withheld under subsection (a) if the average amount of wages (as computed under subparagraph (B)) had been paid to the employee for the number of payroll periods to which the aggregate amount of wages (computed under subparagraph (A)) relates,

(D) determine the excess, if any, of the amount of tax computed under subparagraph (C) over the total amount of tax deducted and withheld by the employer from wages paid to the employee during the calendar year, and

(E) deduct and withhold upon the payment of wages (referred to in subparagraph (A)) to the employee an amount equal to the excess (if any) computed under subparagraph (D).

(4) Other methods

An employer to determine the amount of tax to be deducted and withheld upon the wages paid to an employee by any other method which will require the employer to deduct and withhold upon such wages substantially the same amount as would be required to be deducted and withheld by applying subsection (a) or (c), either with respect to a payroll period or with respect to the entire taxable year.

(i) Changes in withholding

(1) In general

The Secretary may by regulations provide for increases in the amount of withholding otherwise required under this section in cases where the employee requests such changes.

(2) Treatment as tax

Any increased withholding under paragraph (1) shall for all purposes be considered tax required to be deducted and withheld under this chapter.

(j) Noncash remuneration to retail commission salesman

In the case of remuneration paid in any medium other than cash for services performed by an individual as a retail salesman for a person, where the service performed by such individual for such person is ordinarily performed for remuneration solely by way of cash commission an employer shall not be required to deduct or withhold any tax under this subchapter with respect to such remuneration, provided that such employer files with the Secretary such information with respect to such remuneration as the Secretary may by regulation prescribe.

(k) Tips

In the case of tips which constitute wages, subsection (a) shall be applicable only to such tips as are included in a written statement furnished to the employer pursuant to section 6053(a), and only to the extent that the tax can

be deducted and withheld by the employer, at or after the time such statement is so furnished and before the close of the calendar year in which such statement is furnished, from such wages of the employee (excluding tips, but including funds turned over by the employee to the employer for the purpose of such deduction and withholding) as are under the control of the employer; and an employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (16)(B) of section 3401(a) is applicable may deduct and withhold the tax with respect to such tips from any wages of the employee (excluding tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than $20. Such tax shall not at any time be deducted and withheld in an amount which exceeds the aggregate of such wages and funds (including funds turned over under section 3102(c)(2) or section 3202(c)(2)) minus any tax required by section 3102(a) or section 3202(a) to be collected from such wages and funds.

(*l*) Determination and disclosure of marital status

(1) Determination of status by employer

For purposes of applying the tables in subsections (a) and (c) to a payment of wages, the employer shall treat the employee as a single person unless there is in effect with respect to such payment of wages a withholding exemption certificate furnished to the employer by the employee after the date of the enactment of this subsection indicating that the employee is married.

(2) Disclosure of status by employee

An employee shall be entitled to furnish the employer with a withholding exemption certificate indicating he is married only if, on the day of such furnishing, he is married (determined with the application of the rules in paragraph (3)). An employee whose marital status changes from married to single shall, at such time as the Secretary may by regulations prescribe, furnish the employer with a new withholding exemption certificate.

(3) Determination of marital status

For purposes of paragraph (2), an employee shall on any day be considered—

(A) as not married, if (i) he is legally separated from his spouse under a decree of divorce or separate maintenance, or (ii) either he or his spouse is, or on any preceding day within the calendar year was, a nonresident alien; or

(B) as married, if (i) his spouse (other than a spouse referred to in subparagraph (A)) died within the portion of his taxable year which precedes such day, or (ii) his spouse died during one of the two taxable years immediately preceding the current taxable year and, on the basis of facts existing at the beginning of such day, the employee reasonably expects, at the close of his taxable year, to be a surviving spouse (as defined in section 2(a)).

(m) Withholding allowances

Under regulations prescribed by the Secretary, an employee shall be entitled to additional withholding allowances or additional reductions in withholding under this subsection. In determining the number of additional withholding allowances or the amount of additional reductions in withholding under this subsection, the employee may take into account (to the extent and in the manner provided by such regulations)—

(1) estimated itemized deductions allowable under chapter 1 (other than the deductions referred to in section 151 and other than the deductions required to be taken into account in determining adjusted gross income under section 62(a) (other than paragraph (10) thereof)),

(2) estimated tax credits allowable under chapter 1, and

(3) such additional deductions (including the additional standard deduction under section 63(c)(3) for the aged and blind) and other items as may be specified by the Secretary in regulations.

(n) Employees incurring no income tax liability

Notwithstanding any other provision of this section, an employer shall not be required to deduct and withhold any tax under this chapter upon a payment of wages to an employee if there is in effect with respect to such payment a withholding exemption certificate (in such form and containing such other information as the Secretary may prescribe) furnished to the employer by the employee certifying that the employee—

(1) incurred no liability for income tax imposed under subtitle A for his preceding taxable year, and

(2) anticipates that he will incur no liability for income tax imposed under subtitle A for his current taxable year.

The Secretary shall by regulations provide for the coordination of the provisions of this subsection with the provisions of subsection (f).

(*o*) Extension of withholding to certain payments other than wages

(1) General rule

For purposes of this chapter (and so much of subtitle F as relates to this chapter)—

(A) any supplemental unemployment compensation benefit paid to an individual,

(B) any payment of an annuity to an individual, if at the time the payment is made a request that such annuity be subject to withholding under this chapter is in effect, and

(C) any payment to an individual of sick pay which does not constitute wages (determined without regard to this subsection), if at the time the payment is made a request that such sick pay be subject to withholding under this chapter is in effect,

shall be treated as if it were a payment of wages by an employer to an employee for a payroll period.

(2) Definitions

(A) Supplemental unemployment compensation benefits

For purposes of paragraph (1), the term ''supplemental unemployment compensation benefits'' means amounts which are paid to an employee, pursuant to a plan to which the employer is a party, because of an employee's involuntary separation from employment (whether or not such separation is temporary), resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, but only to the extent such benefits are includible in the employee's gross income.

(B) Annuity

For purposes of this subsection, the term ''annuity'' means any amount paid to an individual as a pension or annuity.

(C) Sick pay

For purposes of this subsection, the term ''sick pay'' means any amount which—

(i) is paid to an employee pursuant to a plan to which the employer is a party, and

(ii) constitutes remuneration or a payment in lieu of remuneration for any period during which the employee is temporarily absent from work on account of sickness or personal injuries.

(3) Amount withheld from annuity payments or sick pay

If a payee makes a request that an annuity or any sick pay be subject to withholding under this chapter, the amount to be deducted and withheld under this chapter from any payment to which such request applies shall be an amount (not less than a minimum amount determined under regulations prescribed by the Secretary) specified by the payee in such request. The amount deducted and withheld with respect to a payment which is greater or less than a full payment shall bear the same relation to the specified amount as such payment bears to a full payment.

(4) Request for withholding

A request that an annuity or any sick pay be subject to withholding under this chapter—

(A) shall be made by the payee in writing to the person making the payments and shall contain the social security number of the payee,

(B) shall specify the amount to be deducted and withheld from each full payment, and

(C) shall take effect—

(i) in the case of sick pay, with respect to payments made more than 7 days after the date on which such request is furnished to the payor, or

(ii) in the case of an annuity, at such time (after the date on which such request is furnished to the payor) as the Secretary shall by regulations prescribe.

Such a request may be changed or terminated by furnishing to the person making the payments a written statement of change or termination which shall take effect in the same manner as provided in subparagraph (C). At the election of the payor, any such request (or statement of change or revocation) may take effect earlier than as provided in subparagraph (C).

(5) Special rule for sick pay paid pursuant to certain collective-bargaining agreements

In the case of any sick pay paid pursuant to a collective-bargaining agreement between employee representatives and one or more employers which contains a provision specifying that this paragraph is to apply to sick pay paid pursuant to such agreement and contains a provision for determining the amount to be deducted and withheld from each payment of such sick pay—

(A) the requirement of paragraph (1)(C) that a request for withholding be in effect shall not apply, and

(B) except as provided in subsection (n), the amounts to be deducted and withheld under this chapter shall be determined in accordance with such agreement.

The preceding sentence shall not apply with respect to sick pay paid pursuant to any agreement to any individual unless the social security number of such individual is furnished to the payor and the payor is furnished with such information as is necessary to determine whether the payment is pursuant to the agreement and to determine the amount to be deducted and withheld.

(6) Coordination with withholding on designated distributions under section 3405

This subsection shall not apply to any amount which is a designated distribution (within the meaning of section 3405(e)(1)).

(p) Voluntary withholding agreements

(1) Certain Federal payments

(A) In general

If, at the time a specified Federal payment is made to any person, a request by such person is in effect that such payment be subject to withholding under this chapter, then for purposes of this chapter and so much of subtitle F as relates to this chapter, such payment shall be treated as if it were a payment of wages by an employer to an employee.

(B) Amount withheld

The amount to be deducted and withheld under this chapter from any payment to which any request under subparagraph (A) applies shall be an amount equal to the percentage of such payment specified in such request. Such a request shall apply to any payment only if the percentage specified is 7 percent, any percentage applicable to any of the 3 lowest income brackets in the table under section 1(c), or such other percentage as is permitted under regulations prescribed by the Secretary.

(C) Specified Federal payments

For purposes of this paragraph, the term ''specified Federal payment'' means—

(i) any payment of a social security benefit (as defined in section 86(d)),

(ii) any payment referred to in the second sentence of section 451(d) which is treated as insurance proceeds,

(iii) any amount which is includible in gross income under section 77(a), and

(iv) any other payment made pursuant to Federal law which is specified by the Secretary for purposes of this paragraph.

(D) Requests for withholding

Rules similar to the rules that apply to annuities under subsection (*o*)(4) shall apply to requests under this paragraph and paragraph (2).

(2) Voluntary withholding on unemployment benefits

If, at the time a payment of unemployment compensation (as defined in section 85(b)) is made to any person, a request by such person is in effect that such payment be subject to withholding under this chapter, then for purposes of this chapter and so much of subtitle F as relates to this chapter, such payment shall be treated as if it were a payment of wages by an employer to an employee. The amount to be deducted and withheld under this chapter from any payment to which any request under this paragraph applies shall be an amount equal to 10 percent of such payment.

(3) Authority for other voluntary withholding

The Secretary is authorized by regulations to provide for withholding—

(A) from remuneration for services performed by an employee for the employee's employer which (without regard to this paragraph) does not constitute wages, and

(B) from any other type of payment with respect to which the Secretary finds that withholding would be appropriate under the provisions of this chapter,

if the employer and employee, or the person making and the person receiving such other type of payment, agree to such withholding. Such agreement shall be in such form and manner as the Secretary may by regulations prescribe. For purposes of this chapter (and so much of subtitle F as relates to this chapter), remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect.

(q) Extension of withholding to certain gambling winnings

(1) General rule

Every person, including the Government of the United States, a State, or a political subdivision thereof, or any instrumentalities of the foregoing, making any payment of winnings which are subject to withholding shall deduct and withhold from such payment a tax in an amount equal to the product of the third lowest rate of tax applicable under section 1(c) and such payment.

(2) Exemption where tax otherwise withheld

In the case of any payment of winnings which are subject to withholding made to a nonresident alien individual or a foreign corporation, the tax imposed under paragraph (1) shall not apply to any such payment subject to tax under section 1441(a) (relating to withholding on nonresident aliens) or tax under section 1442(a) (relating to withholding on foreign corporations).

(3) Winnings which are subject to withholding

For purposes of this subsection, the term ''winnings which are subject to withholding'' means proceeds from a wager determined in accordance with the following:

(A) In general

Except as provided in subparagraphs (B) and (C), proceeds of more than $5,000 from a wagering transaction, if the amount of such proceeds is at least 300 times as large as the amount wagered.

(B) State-conducted lotteries

Proceeds of more than $5,000 from a wager placed in a lottery conducted by an agency of a State acting under authority of State law, but only if such wager is placed with the State agency conducting such lottery, or with its authorized employees or agents.

(C) Sweepstakes, wagering pools, certain parimutuel pools, jai alai, and lotteries

Proceeds of more than $5,000 from—

(i) a wager placed in a sweepstakes, wagering pool, or lottery (other than a wager described in subparagraph (B)), or

(ii) a wagering transaction in a parimutuel pool with respect to horse races, dog races, or jai alai if the amount of such proceeds is at least 300 times as large as the amount wagered.

(4) Rules for determining proceeds from a wager

For purposes of this subsection—

(A) proceeds from a wager shall be determined by reducing the amount received by the amount of the wager, and

(B) proceeds which are not money shall be taken into account at their fair market value.

(5) Exception for bingo, keno, and slot machines

The tax imposed under paragraph (1) shall not apply to winnings from a slot machine, keno, and bingo.

(6) Statement by recipient

Every person who is to receive a payment of winnings which are subject to withholding shall furnish the person making such payment a statement, made under the penalties of perjury, containing the name, address, and taxpayer identification number of the person receiving the payment and of each person entitled to any portion of such payment.

(7) Coordination with other sections

For purposes of sections 3403 and 3404 and for purposes of so much of subtitle F (except section 7205) as relates to this chapter, payments to any person of winnings which are subject to withholding shall be treated as if they were wages paid by an employer to an employee.

(r) Extension of withholding to certain taxable payments of Indian casino profits

(1) In general

Every person, including an Indian tribe, making a payment to a member of an Indian tribe from the net revenues of any class II or class III gaming activity conducted or licensed by such tribe shall deduct and withhold from such payment a tax in an amount equal to such payment's proportionate share of the annualized tax.

(2) Exception

The tax imposed by paragraph (1) shall not apply to any payment to the extent that the payment, when annualized, does not exceed an amount equal to the sum of—

(A) the basic standard deduction (as defined in section 63(c)) for an individual to whom section 63(c)(2)(C)[1] applies, and

(B) the exemption amount (as defined in section 151(d)).

(3) Annualized tax

For purposes of paragraph (1), the term ''annualized tax'' means, with respect to any payment, the amount of tax which would be imposed by section 1(c) (determined without regard to any rate of tax in excess of the fourth lowest rate of tax applicable under section 1(c)) on an amount of taxable income equal to the excess of—

(A) the annualized amount of such payment, over

(B) the amount determined under paragraph (2).

(4) Classes of gaming activities, etc.

For purposes of this subsection, terms used in paragraph (1) which are defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), as in effect on the date of the enactment of this subsection, shall have the respective meanings given such terms by such section.

(5) Annualization

Payments shall be placed on an annualized basis under regulations prescribed by the Secretary.

(6) Alternate withholding procedures

At the election of an Indian tribe, the tax imposed by this subsection on any payment made by such tribe shall be determined in accordance with such tables or computational procedures as may be specified in regulations prescribed by the Secretary (in lieu of in accordance with paragraphs (2) and (3)).

(7) Coordination with other sections

For purposes of this chapter and so much of subtitle F as relates to this chapter, payments to any person which are subject to withholding under this subsection shall be treated as if they were wages paid by an employer to an employee.

(s) Exemption from withholding for any vehicle fringe benefit

(1) Employer election not to withhold

The employer may elect not to deduct and withhold any tax under this chapter with respect to any vehicle fringe benefit provided to any employee if such employee is notified by the employer of such election (at such time and in such manner as the Secretary shall by regulations prescribe). The preceding sentence shall not apply to any vehicle fringe benefit unless the amount of such benefit is included by the employer on a statement timely furnished under section 6051.

(2) Employer must furnish W–2

Any vehicle fringe benefit shall be treated as wages from which amounts are required to be deducted and withheld under this chapter for purposes of section 6051.

(3) Vehicle fringe benefit

For purposes of this subsection, the term ''vehicle fringe benefit'' means any fringe benefit—

(A) which constitutes wages (as defined in section 3401), and

(B) which consists of providing a highway motor vehicle for the use of the employee.

(t) Extension of withholding to certain payments made by Government entities

(1) General rule

The Government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-State agencies) making any payment to any person providing any property or services (including any payment made in connection with a government voucher or certificate program which functions as a payment for property or services) shall deduct and withhold from such payment a tax in an amount equal to 3 percent of such payment.

(2) Property and services subject to withholding

Paragraph (1) shall not apply to any payment—

(A) except as provided in subparagraph (B), which is subject to withholding under any other provision of this chapter or chapter 3,

(B) which is subject to withholding under section 3406 and from which amounts are being withheld under such section,

(C) of interest,

(D) for real property,

(E) to any governmental entity subject to the requirements of paragraph (1), any tax-exempt entity, or any foreign government,

(F) made pursuant to a classified or confidential contract described in section 6050M(e)(3),

(G) made by a political subdivision of a State (or any instrumentality thereof) which makes less than $100,000,000 of such payments annually,

(H) which is in connection with a public assistance or public welfare program for which eligibility is determined by a needs or income test, and

(I) to any government employee not otherwise excludable with respect to their services as an employee.

(3) Coordination with other sections

For purposes of sections 3403 and 3404 and for purposes of so much of subtitle F (except sec-

[1] See References in Text note below.

tion 7205) as relates to this chapter, payments to any person for property or services which are subject to withholding shall be treated as if such payments were wages paid by an employer to an employee.

(Aug. 16, 1954, ch. 736, 68A Stat. 457; Aug. 9, 1955, ch. 666, § 2, 69 Stat. 605; Pub. L. 87–256, § 110(g)(2), Sept. 21, 1961, 75 Stat. 537; Pub. L. 88–272, title III, § 302(a), (b), Feb. 26, 1964, 78 Stat. 140; Pub. L. 89–97, title III, § 313(d)(3)–(5), July 30, 1965, 79 Stat. 384; Pub. L. 89–212, § 2(c), Sept. 29, 1965, 79 Stat. 859; Pub. L. 89–368, title I, § 101(a)–(e)(3), Mar. 15, 1966, 80 Stat. 38–61; Pub. L. 90–364, title I, § 102(c), June 28, 1968, 82 Stat. 256; Pub. L. 91–36, § 2(a), June 30, 1969, 83 Stat. 42; Pub. L. 91–53, § 6(a), Aug. 7, 1969, 83 Stat. 96; Pub. L. 91–172, title VIII, § 805(a)–(e), (f)(1), (g), Dec. 30, 1969, 83 Stat. 686, 704–708; Pub. L. 92–178, title II, § 208(a), (b)(1), (c)–(h)(1), Dec. 10, 1971, 85 Stat. 512–517; Pub. L. 94–12, title II, §§ 202(b), 205, Mar. 29, 1975, 89 Stat. 29, 32; Pub. L. 94–164, §§ 2(b)(2), 5(a)(1), Dec. 23, 1975, 89 Stat. 971, 975; Pub. L. 94–331, § 3(a)(1), June 30, 1976, 90 Stat. 782; Pub. L. 94–396, § 2(a)(1), Sept. 3, 1976, 90 Stat. 1201; Pub. L. 94–414, § 3(a)(1), Sept. 17, 1976, 90 Stat. 1273; Pub. L. 94–455, title IV, § 401(d), title V, §§ 502(b), 504(c)(3), title XII, § 1207(d), title XIX, §§ 1903(a)(17), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1557, 1559, 1566, 1705, 1810, 1834; Pub. L. 95–30, title I, § 105, title IV, § 405(a), May 23, 1977, 91 Stat. 140, 156; Pub. L. 95–600, title I, §§ 101(e), 102(c), title VI, § 601(b)(2), Nov. 6, 1978, 92 Stat. 2770, 2771, 2896; Pub. L. 96–601, § 4(a)–(d), Dec. 24, 1980, 94 Stat. 3496, 3497; Pub. L. 97–34, title I, § 101(e), Aug. 13, 1981, 95 Stat. 184; Pub. L. 97–248, title III, §§ 317(a), 334(d), Sept. 3, 1982, 96 Stat. 607, 627; Pub. L. 98–67, title I, § 104(d)(3), Aug. 5, 1983, 97 Stat. 380; Pub. L. 99–44, § 3, May 24, 1985, 99 Stat. 77; Pub. L. 99–514, title I, § 104(b)(15), title XIII, §§ 1301(j)(8), 1303(b)(4), title XV, § 1581(b), Oct. 22, 1986, 100 Stat. 2106, 2658, 2766; Pub. L. 100–203, title X, § 10302(a), Dec. 22, 1987, 101 Stat. 1330–429; Pub. L. 100–647, title I, § 1003(a)(2), Nov. 10, 1988, 102 Stat. 3382; Pub. L. 101–508, title XI, § 11801(a)(41), Nov. 5, 1990, 104 Stat. 1388–521; Pub. L. 102–318, title V, § 522(b)(2)(D), July 3, 1992, 106 Stat. 314; Pub. L. 102–486, title XIX, §§ 1934(a), 1942(a), Oct. 24, 1992, 106 Stat. 3031, 3036; Pub. L. 103–465, title VII, §§ 701(a), 702(a), Dec. 8, 1994, 108 Stat. 4995, 4996; Pub. L. 107–16, title I, § 101(c)(6)–(9), June 7, 2001, 115 Stat. 43, 44; Pub. L. 109–222, title V, § 511(a), May 17, 2006, 120 Stat. 364.)

Amendment of Section

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

References in Text

The date of the enactment of this subsection, referred to in subsec. (*l*)(1), is the date of enactment of Pub. L. 89–368, which was approved Mar. 15, 1966.

Section 63(c)(2)(C), referred to in subsec. (r)(2)(A), was redesignated section 63(c)(2)(D), and a new section 63(c)(2)(C) was added, by Pub. L. 107–147, title IV, § 411(e)(1)(C), (D), Mar. 9, 2002, 116 Stat. 46.

Section 4 of the Indian Gaming Regulatory Act, referred to in subsec. (r)(4), is classified to section 2703 of Title 25, Indians.

The date of the enactment of this subsection, referred to in subsec. (r)(4), is the date of enactment of Pub. L. 103–465, which was approved Dec. 8, 1994.

Amendments

2006—Subsec. (t). Pub. L. 109–222 added subsec. (t).

2001—Subsec. (p)(1)(B). Pub. L. 107–16, §§ 101(c)(6), 901, temporarily substituted ''7 percent, any percentage applicable to any of the 3 lowest income brackets in the table under section 1(c),'' for ''7, 15, 28, or 31 percent''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (p)(2). Pub. L. 107–16, §§ 101(c)(7), 901, temporarily substituted ''10 percent'' for ''15 percent''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (q)(1). Pub. L. 107–16, §§ 101(c)(8), 901, temporarily substituted ''equal to the product of the third lowest rate of tax applicable under section 1(c) and such payment'' for ''equal to 28 percent of such payment''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (r)(3). Pub. L. 107–16, §§ 101(c)(9), 901, temporarily substituted ''the fourth lowest rate of tax applicable under section 1(c)'' for ''31 percent'' in introductory provisions. See Effective and Termination Dates of 2001 Amendment note below.

1994—Subsec. (p). Pub. L. 103–465, § 702(a), reenacted heading without change and amended text of subsec. (p) generally. Prior to amendment, text read as follows: ''The Secretary is authorized by regulations to provide for withholding—

''(1) from remuneration for services performed by an employee for his employer which (without regard to this subsection) does not constitute wages, and

''(2) from any other type of payment with respect to which the Secretary finds that withholding would be appropriate under the provisions of this chapter,

if the employer and the employee, or in the case of any other type of payment the person making and the person receiving the payment, agree to such withholding. Such agreement shall be made in such form and manner as the Secretary may by regulations provide. For purposes of this chapter (and so much of subtitle F as relates to this chapter) remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect.''

Subsec. (r). Pub. L. 103–465, § 701(a), added subsec. (r).

1992—Subsec. (*o*)(6). Pub. L. 102–318 substituted ''3405(e)(1)'' for ''3405(d)(1)''.

Subsec. (q)(1). Pub. L. 102–486, § 1934(a), substituted ''28 percent'' for ''20 percent''.

Subsec. (q)(3)(A), (C). Pub. L. 102–486, § 1942(a), substituted ''$5,000'' for ''$1,000''.

1990—Subsec. (a)(3). Pub. L. 101–508 struck out par. (3) which read as follows: ''Notwithstanding the provisions of this subsection, the Secretary shall modify the tables and procedures under paragraph (1) to reflect—

''(A) the amendments made by section 101(b) of the Economic Recovery Tax Act of 1981, and such modification shall take effect on October 1, 1981, as if such amendments made a 5-percent reduction effective on such date, and

''(B) the amendments made by section 101(a) of such Act, and such modifications shall take effect—

''(i) on July 1, 1982, as if the reductions in the rate of tax under section 1 (as amended by such section) were attributable to a 10-percent reduction effective on such date, and

''(ii) on July 1, 1983, as if such reductions were attributable to a 10-percent reduction effective on such date.''

1988—Subsec. (m)(1). Pub. L. 100–647 substituted ''section 62(a) (other than paragraph (10) thereof))'' for ''section 62) (other than paragraph (13) thereof)''.

1987—Subsec. (f)(3)(B). Pub. L. 100–203 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''A withholding exemption certificate furnished the employer in cases in which a previous such certificate is in effect shall take effect with re-

spect to the first payment of wages made on or after the first status determination date which occurs at least 30 days from the date on which such certificate is so furnished, except that at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is so furnished; but a certificate furnished pursuant to paragraph (2)(C) shall not take effect, and may not be made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished. For purposes of this subparagraph the term 'status determination date' means January 1, May 1, July 1, and October 1 of each year.''

1986—Subsec. (f)(1). Pub. L. 99–514, §104(b)(15)(F), substituted ''standard deduction'' for ''zero bracket'' and ''subparagraph (E)'' for ''subparagraph (G)'' in last sentence.

Subsec. (f)(1)(A). Pub. L. 99–514, §104(b)(15)(B), inserted ''unless he is an individual described in section 151(d)(2)'' after ''himself''.

Subsec. (f)(1)(B). Pub. L. 99–514, §104(b)(15)(A), redesignated subpar. (D) as (B) and struck out former subpar. (B) which read as follows: ''one additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151(c)(1) (relating to old age) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;''.

Pub. L. 99–514, §104(b)(15)(C), which directed that ''subparagraph (A) or (D)'' be substituted for ''subparagraph (A), (B), (C), or (F)'' was executed by making the substitution for ''subparagraph (A), (B), or (C)'', as the probable intent of Congress.

Subsec. (f)(1)(C). Pub. L. 99–514, §104(b)(15)(A), (D), redesignated subpar. (E) as (C), substituted ''section 151(c)'' for ''section 151(e)'', and struck out former subpar. (C) which read as follows: ''one additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151(d)(1) (relating to the blind) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;''.

Subsec. (f)(1)(D). Pub. L. 99–514, §104(b)(15)(A), redesignated subpar. (F) as (D). Former subpar. (D) redesignated (B).

Subsec. (f)(1)(E). Pub. L. 99–514, §104(b)(15)(A), (E), redesignated subpar. (G) as (E) and substituted ''standard deduction'' for ''zero bracket''. Former subpar. (E) redesignated (C).

Pub. L. 99–514, §1301(j)(8), substituted ''section 7703'' for ''section 143''.

Subsec. (f)(1)(F), (G). Pub. L. 99–514, §104(b)(15)(A), redesignated subpars. (F) and (G) as (D) and (E), respectively.

Subsec. (i)(1). Pub. L. 99–514, §1581(b), struck out ''or decreases'' after ''increases''.

Subsec. (m)(3). Pub. L. 99–514, §104(b)(15)(G), inserted ''(including the additional standard deduction under section 63(c)(3) for the aged and blind)''.

Subsec. (r). Pub. L. 99–514, §1303(b)(4), struck out subsec. (r) which provided for extension of withholding to GSOC distributions.

1985—Subsec. (s). Pub. L. 99–44 added subsec. (s).

1983—Subsec. (s). Pub. L. 98–67 struck out subsec. (s) which related to extension of withholding to certain payments where identifying number was not furnished or was inaccurate. See section 3406 of this title.

1982—Subsec. (*o*)(6). Pub. L. 97–248, §334(d), added par. (6).

Subsec. (s). Pub. L. 97–248, §317(a), added subsec. (s).

1981—Subsec. (a). Pub. L. 97–34, §101(e)(1), revised subsec. (a) generally to provide for a 5-percent reduction in income tax withholding rates on Oct. 1, 1981, a further 10-percent reduction on July 1, 1982, and a final 10-percent reduction on July 1, 1983.

Subsec. (b)(1). Pub. L. 97–34, §101(e)(2)(A), redesignated par. (2) as (1). Former par. (1), which set out a table for determining amount of one withholding exemption for each of the various payroll periods, was struck out.

Subsec. (b)(2). Pub. L. 97–34, §101(e)(2)(A), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (b)(3). Pub. L. 97–34, §101(e)(2)(A), (B), redesignated par. (4) as (3) and substituted provisions relating to an employer's computation of the tax to be deducted and withheld as if the aggregate of the wages paid to the employee during the calendar week were paid for a weekly payroll period, for provisions relating to an employer's computation of the tax to be deducted and withheld using the excess of the aggregate of the wages paid to the employee during the calendar week over the withholding exemption allowed by this subsection for a weekly payroll period. Former par. (3) redesignated (2).

Subsec. (b)(4), (5). Pub. L. 97–34, §101(e)(2)(A), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (f)(1)(G). Pub. L. 97–34, §101(e)(3), inserted ''(or more than one exemption if so prescribed by the Secretary)'' after ''an amount equal to one exemption''.

Subsec. (i). Pub. L. 97–34, §101(e)(4), substituted provisions authorizing the Secretary by regulations to provide for increases or decreases in the amount of withholding otherwise required under this section in cases where the employee requests the changes, for provisions under which the Secretary was authorized to provide withholding in addition to that otherwise required under this section in cases in which the employer and the employee agreed to such additional withholding.

Subsec. (m). Pub. L. 97–34, §101(e)(5), revised provisions respecting additional withholding allowances for anticipated excess itemized deductions and tax credits claimed in accordance with Treasury regulations and Treasury statutory authority to provide additional withholding allowances for any additional items specified in Treasury regulations.

1980—Subsec. (*o*)(1)(C). Pub. L. 96–601, §4(a), added subpar. (C).

Subsec. (*o*)(2)(B). Pub. L. 96–601, §4(d), struck out '', but only to the extent that the amount is includible in the gross income of such individual'' after ''pension or annuity''.

Subsec. (*o*)(2)(C). Pub. L. 96–601, §4(c), added subpar. (C).

Subsec. (*o*)(3). Pub. L. 96–601, §4(b), substituted provision authorizing amount to be withheld from annuity payments or sick pay for provision relating to request for withholding. See subsec. (*o*)(4) of this section.

Subsec. (*o*)(4), (5). Pub. L. 96–601, §4(b), added pars. (4) and (5).

1978—Subsec. (a). Pub. L. 95–600, §101(e)(1), substituted ''With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977 and the amendments made by section 101 of the Revenue Act of 1978.'' for ''With respect to wages paid after May 31, 1977, and before January 1, 1979, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1976; except that such tables shall be modified to the extent necessary so that, had they been in effect for all of 1977, they would reflect the full year effect of the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977. With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977.''.

Subsec. (b)(1). Pub. L. 95–600, §102(c)(1), increased the amounts set out in the table for one withholding ex-

emption for each of the payroll period categories from $14.40, $28.80, $31.30, $62.50, $187.50, $375.00, $750.00 and $2.10 to $19.23, $38.46, $41.66, $83.33, $250.00, $500.00, $1,000.00 and $2.74, respectively.

Subsec. (m)(1). Pub. L. 95–600, §§101(e)(2), 102(c)(2), substituted ''$1,000'' for ''$750'', ''$3,400'' for ''$3,200'' and ''$2,300'' for ''$2,200''.

Subsec. (r). Pub. L. 95–600, §601(b)(2), added subsec. (r).

1977—Subsec. (a). Pub. L. 95–30, §105(a), substituted ''With respect to wages paid after May 31, 1977, and before January 1, 1979, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1976; except that such tables shall be modified to the extent necessary so that, had they been in effect for all of 1977, they would reflect the full year effect of the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977. With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977'' for ''With respect to wages paid prior to January 1, 1978, the tables so prescribed shall be the same as the tables prescribed under this section which were in effect on January 1, 1976. With respect to wages paid after December 31, 1977, the Secretary shall prescribe new tables which shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made to subsections (b) and (c) of section 141 by the Tax Reform Act of 1976''.

Subsec. (f)(1). Pub. L. 95–30, §105(b)(1), substituted ''zero bracket'' for ''standard deduction'' in subpar. (G) and in provisions following subpar. (G).

Subsec. (m)(1)(B). Pub. L. 95–30, §105(b)(2), substituted ''an amount equal to $3,200 ($2,200'' for ''an amount equal to the lesser of (i) 16 percent of his estimated wages, or (ii) $2,800 ($2,400''.

Subsec. (m)(2)(A). Pub. L. 95–30, §105(b)(3)(A), (B), substituted ''section 151'' for ''sections 141 and 151'' and ''(or the zero bracket amount (within the meaning of section 63(d)))'' for ''(or the amount of the standard deduction)''.

Subsec. (m)(2)(C). Pub. L. 95–30, §105(b)(3)(C), substituted ''(or the zero bracket amount)'' for ''(or the standard deduction)''.

Subsec. (q)(3)(C). Pub. L. 95–30, §405(a), inserted reference to certain parimutuel pools and jai alai in heading and, in text, designated existing provisions as cl. (i) and added cl. (ii).

1976—Subsec. (a). Pub. L. 94–455, §§401(d)(1), 1906 (b)(13)(A), struck out ''or his delegate'' after ''Secretary'', inserted ''With respect to wages paid prior to January 1, 1978'' after ''by the Secretary'', as amended, and substituted ''prescribed under this section which were'' for ''contained in this subsection as'' after ''same as the tables'', ''1976'' for ''1975'' after ''January 1'', and ''With respect to wages paid after December 31, 1977, the Secretary shall prescribe new tables which shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made to subsections (b) and (c) of section 141 by the Tax Reform Act of 1976'' for ''except that the amounts set forth as amounts of income tax to be withheld with respect to wages paid after April 30, 1975, and before January 1, 1976, shall reflect the full calendar year effect for 1975 of the amendments made by sections 201, 202, 203, and 204 of the Tax Reduction Act of 1975'' after ''effect on January 1, 1976'', as amended.

Pub. L. 94–414 substituted ''October 1, 1976'' for ''September 15, 1976''.

Pub. L. 94–396 substituted ''September 15, 1976'' for ''September 1, 1976''.

Pub. L. 94–331 substituted ''September 1, 1976'' for ''July 1, 1976''.

Subsec. (c)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(6). Pub. L. 94–455, §§401(d)(2), 1906(b)(13)(A), substituted ''the table for an annual payroll period prescribed pursuant to subsection (a)'' for ''table 7 contained in subsection (a)'' after ''basis of the'', as subsec. (c)(6) was in effect on the day before the date of enactment of the Tax Reduction Act of 1975, Pub. L. 94–12, which was approved on Mar. 29, 1975, and struck out ''or his delegate'' after ''Secretary''.

Subsecs. (f), (h), (i), (j). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (*l*). Pub. L. 94–455, §1903(a)(17), substituted ''section 2(a)'' for ''section 2(b)'' after ''as defined in''.

Subsec. (m)(1)(B). Pub. L. 94–455, §401(d)(3), reenacted subpar. (B) without change.

Subsec. (m)(2)(A). Pub. L. 94–455, §502(b), inserted ''(other than paragraph (13) thereof)'' after ''under section 62''.

Subsec. (m)(2)(D), (3)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (m)(4). Pub. L. 94–455, §504(c)(3), added subpar. (C). §1906(b)(13)(A) struck out ''or his delegate'' after ''Secretary''.

Subsecs. (n), (p). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (q). Pub. L. 94–455, §1207(d), added subsec. (q).

1975—Subsec. (a). Pub. L. 94–164, §5(a)(1), inserted provision that the tables prescribed with respect to wages paid after Dec. 31, 1975, and before July 1, 1976, shall be the same as the tables prescribed under this subsection which were in effect on Dec. 10, 1975.

Pub. L. 94–12, §205(a), substituted provisions directing the Secretary to prescribe new withholding tables setting changed withholding rates for wages paid during the period May 1, 1975, to Dec. 31, 1975, so as to reflect the full calendar year effect for 1975 of the amendments to the minimum standard deduction, the percentage standard deduction, the earned income credit, and the additional tax credit by sections 201, 202, 203, and 204 of the Tax Reduction Act of 1975, Pub. L. 94–12, for provisions setting out 8 tables to be followed by employers in withholding taxes on wages paid.

Subsec. (c)(6). Pub. L. 94–12, §205(b), substituted ''the table for an annual payroll period prescribed pursuant to subsection (a)'' for ''table 7 contained in subsection (a)''. See 1976 Amendment note set out above.

Subsec. (m)(1)(B). Pub. L. 94–164, §2(b)(2), substituted ''$2,800'' and ''$2,400'' for ''$2,600'' and ''$2,300'' respectively in cl. (ii).

Pub. L. 94–12, §202(b), substituted ''the lesser of (i) 16 percent of his estimated wages, or (ii) $2,600 ($2,300 in the case of an individual who is not married (within the meaning of section 143) and who is not a surviving spouse (as defined in section 2(a)))'' for ''the lesser of (i) $2,000 or (ii) 15 percent of his estimated wages''.

1971—Subsec. (a). Pub. L. 92–178, §208(a), substituted new sets of tables 1 to 8 applicable (under §208(i)(1)) with respect to wages paid after Jan. 15, 1972, for the tables applicable in the case of wages paid as provided in former: par. (1) after Dec. 31, 1969, and before July 1, 1970; par. (2) after June 30, 1970, and before Jan. 1, 1971; par. (3) after Dec. 31, 1970, and before Jan. 1, 1972; par. (4) after Dec. 31, 1971, and before Jan. 1, 1973; and par. (5) after Dec. 31, 1972. Pub. L. 92–178, §208(h)(1), made provisions of par. (3) applicable (under section 208(i)(2)) with respect to wages paid after Dec. 31, 1971, and before Jan. 16, 1972.

Subsec. (b)(1). Pub. L. 92–178, §208(b)(1), revised withholding rates upwards, substituting 14.40; 28.80; 31.30; 62.50; 187.50; 375.00; 750.00; and 2.10 for 12.50; 25.00 27.10; 54.20; 162.50; 325.00; 650.00; and 1.80, respectively, to be effective with respect to wages paid after Jan. 15, 1972. Pub. L. 92–178, §208(h)(2), in amending Pub. L. 91–172, §805(b)(1), extended application of such former withholding rates to wages paid after June 30, 1970, and be-

fore Jan. 16, 1972, previously applicable to wages paid before Jan. 1, 1972.

Subsec. (c)(6). Pub. L. 92–178, §208(g), substituted ''table 7 contained in subsection (a)'' for ''table 7 contained in paragraph (1), (2), (3), (4), or (5) (whichever is applicable) of subsection (a)''.

Subsec. (f)(1)(G). Pub. L. 92–178, §208(c), added subpar. (G).

Subsec. (f)(7). Pub. L. 92–178, §208(d), added par. (7).

Subsec. (m)(1)(B). Pub. L. 92–178, §208(e), substituted ''an amount equal to the lesser of (i) $2,000 or (ii) 15 percent of his estimated wages'' for ''an amount equal to 15 percent of his estimated wages''.

Subsec. (m)(2)(A). Pub. L. 92–178, §208(f)(1), inserted ''or (if such a return has not been filed for such preceding taxable year at the time the withholding exemption certificate is furnished the employer) the second taxable year preceding the estimation year'' after ''for the taxable year preceding the estimation year''.

Subsec. (m)(2)(D). Pub. L. 92–178, §208(f)(2), substituted as definition of ''estimation year'' the calendar year in which the wages are paid for prior provision defining term as meaning ''(i) with respect to payments of wages after April 30 and on or before December 31 of any calendar year, such calendar year, and (ii) with respect to payments of wages on or after January 1 and before May 1 of any calendar year, the preceding calendar year (except that with respect to an exemption certificate furnished by an employee after he has filed his return for the preceding calendar year, such term means the current calendar year).''

Subsec. (m)(3)(B) to (E). Pub. L. 92–178, §208(f)(3), struck out subpars. (B) and (C) providing that only one certificate be in effect and for termination of effectiveness of certificate and redesignated subpars. (D) and (E) as (B) and (C), respectively.

1969—Subsec. (a)(1). Pub. L. 91–172, §805(a), (b)(2), substituted new sets of tables 1 to 8 for application to wages paid after Dec. 31, 1969, and before July 1, 1970, and after June 30, 1970, and before January 1, 1972, for the tables applicable to wages paid before July 13, 1968, and after Dec. 31, 1969.

Pub. L. 91–53, §6(a)(1), substituted ''December 31, 1969'' for ''July 31, 1969''.

Pub. L. 91–36, §2(a)(1), substituted ''July 31, 1969'' for ''June 30, 1969''.

Subsec. (a)(2). Pub. L. 91–172, §805(a), substituted a set of tables 1 to 8 for application to wages paid after June 30, 1970, and before Jan. 1, 1971, for the tables applicable to wages paid after June 30, 1970, and before Jan. 1, 1970.

Pub. L. 91–53, §6(a)(2), substituted ''January 1, 1970'' for ''August 1, 1969''.

Pub. L. 91–36, §2(a)(2), substituted ''August 1, 1969'' for ''July 1, 1969''.

Subsec. (a)(3) to (5). Pub. L. 91–172, §805(a), added sets of tables applicable, respectively, to wages paid after Dec. 31, 1970, and before Jan. 1, 1972, after Dec. 31, 1971, and before Jan. 1, 1973, and after Dec. 31, 1972.

Subsec. (b)(1). Pub. L. 91–172, §805(b)(1)–(4), revised withholding rates effective with respect to wages paid after Dec. 31, 1969, and before July 1, 1970, for the period after June 30, 1970, and before Jan. 1, 1972, during 1972, and after 1972.

Subsec. (c)(1). Pub. L. 91–172, §805(c)(1), substituted provisions authorizing employer to deduct and withhold tax determinable according to tables prescribed by the Secretary or his delegate for provisions under which the employer was authorized to deduct and withhold tax only according to tables set out.

Subsec. (c)(6). Pub. L. 91–172, §805(c)(2), substituted provisions for determination of amount deductible according to tables prescribed by the Secretary or his delegate and for computation of wages and amounts of income tax after Dec. 31, 1969, for provisions for determination of such wages and amounts of income tax after July 13, 1968, and before Jan. 1, 1970.

Pub. L. 91–53, §6(a)(3), substituted ''January 1, 1970'' for ''August 1, 1969''.

Pub. L. 91–36, §2(a)(3), substituted ''August 1, 1969'' for ''July 1, 1969''.

Subsec. (h). Pub. L. 91–172, §805(d), redesignated existing pars. (1) to (3) as subpars. (A) to (C) of par. (1), and added pars. (2) to (4).

Subsec. (m)(1). Pub. L. 91–172, §805(e)(2), substituted $750 for $700 in the material preceding subpar. (A) and in subpar. (B) substituted 15 per cent for 10 per cent of the first $7,500 and 17 per cent of remainder of the estimated wages.

Subsec. (m)(2)(A). Pub. L. 91–172, §805(e)(2), inserted amount of standard deduction as an alternative limit in cl. (i), and substituted the determinable additional deductions for provisions referring to an employee who did not show such deductions on his return.

Subsec. (m)(2)(B). Pub. L. 91–172, §805(e)(2), struck out limit on aggregate amount.

Subsec. (m)(2)(C), (D). Pub. L. 91–172, §805(e)(1), (2), added subpar. (C). Former subpar. (C) redesignated (D)

Subsec. (n). Pub. L. 91–172, §805(f)(1), added subsec. (n).

Subsecs. (*o*), (p). Pub. L. 91–172, §805(g), added subsecs. (*o*) and (p).

1968—Subsec. (a). Pub. L. 90–364, §102(c)(1), designated existing Tables 1 to 8 as constituting par. (1), inserted provisions preceding existing Table 1–8 so as to limit their application to the case of wages paid on or before the 15th day after the date of the enactment of the Revenue and Expenditure Control Act of 1968 or after June 30, 1969, and added par. (2).

Subsec. (c)(6). Pub. L. 90–364, §102(c)(2), added par. (6).

1966—Subsec. (a). Pub. L. 89–368, §101(a), struck out reference to subsections (j) and (k) and substituted provisions establishing separate tables for single persons and for married persons in each of eight payroll period categories each containing six graduated withholding rates ranging from 14 to 30 percent for provisions placing the rate at a fixed 14 percent.

Subsec. (b)(1). Pub. L. 89–368, §101(b), increased amounts set out for one withholding exemption for each of the payroll period categories from ''$13.00'', ''$26.00'', ''$28.00'', ''$56.00'', ''$167.00'', ''$333.00'', ''$667.00'', and ''$1.80'' to ''$13.50'', ''$26.90'', ''$29.20'', ''$58.30'', ''$175.00'', ''$350.00'', ''$700.00'', and ''$1.90'' respectively.

Subsec. (c)(1). Pub. L. 89–368, §101(c), replaced existing tables with separate tables for employees who are married and for employees who are not married covering weekly, biweekly, semimonthly, monthly, and daily or miscellaneous pay periods and reflecting increased and graduated withholding rates.

Subsec. (f)(1)(F), (3)(B). Pub. L. 89–368, §101(e)(1), (3), added par. (1)(F) and, in par. (3)(B), changed definition of ''status determination date'' from January 1 and July 1 of each year to January 1, May 1, July 1, and October 1 of each year.

Subsec. (*l*). Pub. L. 89–368, §101(d), added subsec. (*l*).

Subsec. (m). Pub. L. 89–368, §101(e)(2), added subsec. (m).

1965—Subsec. (a). Pub. L. 89–97, §313(d)(3), substituted ''subsections (j) and (k)'' for ''subsection (j)''.

Subsec. (h)(3). Pub. L. 89–97, §313(d)(4), inserted ''(and, in the case of tips referred to in subsection (k), within 30 days thereafter)'' after ''quarter'' first place it appears.

Subsec. (k). Pub. L. 89–212 inserted ''or section 3202 (c)(2)'' and ''or section 3202(a)''.

Pub. L. 89–97, §313(d)(5), added subsec. (k).

1964—Subsec. (a). Pub. L. 88–272, §302(a), reduced tax from 18% to 14%.

Subsec. (c)(1). Pub. L. 88–272, §302(b), substituted new tables reflecting lowered withholding rates.

1961—Subsec. (f)(6). Pub. L. 87–256 added par. (6).

1955—Subsec. (a). Act Aug. 9, 1955, §2(a), inserted ''(except as provided in subsection (j))'' after ''upon such wages''.

Subsec. (j). Act Aug. 9, 1955, §2(b), added subsec. (j).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title V, §511(b), May 17, 2006, 120 Stat. 365, as amended by Pub. L. 111–5, div. B, title I, §1511, Feb. 17, 2009, 123 Stat. 355, provided that: ''The amend-

ment made by this section [amending this section] shall apply to payments made after December 31, 2011.''

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to amounts paid after the 60th day after June 7, 2001, and references to income brackets and rates of tax in such amendment to be applied without regard to section 1(i)(1)(D) of this title, see section 101(d)(2) of Pub. L. 107–16, set out as a note under section 1 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 701(b) of Pub. L. 103–465 provided that: ''The amendment made by this section [amending this section] shall apply to payments made after December 31, 1994.''

Amendment by section 702(a) of Pub. L. 103–465 applicable to payments made after Dec. 31, 1996, see section 702(d) of Pub. L. 103–465, set out as a note under section 3304 of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Section 1934(b) of Pub. L. 102–486 provided that: ''The amendment made by this section [amending this section] applies to payments received after December 31, 1992.''

Section 1942(b) of Pub. L. 102–486 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payments of winnings after December 31, 1992.''

Amendment by Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10302(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to certificates furnished after the day 30 days after the date of the enactment of this Act [Dec. 22, 1987].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(15) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1303(b)(4) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1311(f) of Pub. L. 99–514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 6(d) of Pub. L. 99–44 provided that: ''The amendment made by section 3 [amending this section] shall take effect on January 1, 1985.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98–67, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 317(b) of Pub. L. 97–248 provided: ''The amendments made by subsection (a) [amending this section] shall apply to payments made after December 31, 1983.''

Amendment by section 334(d) of Pub. L. 97–248 applicable to payments or other distributions made after Dec. 31, 1982, see section 334(e) of Pub. L. 97–248, set out as an Effective Date note under section 3405 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 101(f)(2) of Pub. L. 97–34 provided that: ''The amendments made by subsection (e) [amending this section] shall apply to remuneration paid after September 30, 1981; except that the amendment made by subsection (e)(5) [amending this section] shall apply to remuneration paid after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 4(f) of Pub. L. 96–601 provided that: ''The amendments made by this section [amending this section and section 6051 of this title] shall apply to payments made on or after the first day of the first calendar month beginning more than 120 days after the date of the enactment of this Act [Dec. 24, 1980].''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 101(f)(2) of Pub. L. 95–600 provided that: ''The amendments made by subsection (e) [amending this section] shall apply to remuneration paid after December 31, 1978.''

Section 102(d)(2) of Pub. L. 95–600 provided that: ''The amendments made by subsection (c) [amending this section] shall apply with respect to remuneration paid after December 31, 1978.''

Amendment by section 601(b)(2) of Pub. L. 95–600 applicable with respect to corporations chartered after Dec. 31, 1978, and before Jan. 1, 1984, see section 601(d) of Pub. L. 95–600, set out as a note under section 172 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 106(b) of Pub. L. 95–30 provided that: ''The amendments made by section 105 [amending this section] shall apply to wages paid after April 30, 1977.''

Section 405(b) of Pub. L. 95–30 provided that: ''The amendments made by this section [amending this section] apply to payments made after April 30, 1977.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 401(d) of Pub. L. 94–455 applicable to wages paid after Sept. 14, 1976, see section 401(e) of Pub. L. 94–455, set out as a note under section 32 of this title.

Section 1207(f)(3) of Pub. L. 94–455 provided that: ''The amendments made by subsection (d) [amending this section] shall apply to payments of winnings made after the 90th day after the date of the enactment of this Act [Oct. 4, 1976].''

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENTS

Amendment by section 2(b)(2) of Pub. L. 94–164 applicable to taxable years ending after Dec. 31, 1975 and before Jan. 1, 1977, see section 2(g) of Pub. L. 94–164, set out as an Effective Date of 1975 Amendment note under section 32 of this title.

Section 209(c) of Pub. L. 94–12, as amended by Pub. L. 94–164, § 5(a)(2); Pub. L. 94–331, § 3(a)(2); Pub. L. 94–396, § 2(b); Pub. L. 94–414, § 3(a)(2), provided that: ''The amendments made by sections 202(b) and 205 [amending this section] shall apply to wages paid after April 30, 1975, and before October 1, 1976.''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 208(i) of Pub. L. 92–178 provided that:

''(1) The amendments made by this section [amending this section] (other than subsection (h)) shall apply with respect to wages paid after January 15, 1972.

''(2) The amendments made by subsection (h) [amending this section] shall apply with respect to wages paid after December 31, 1971, and before January 16, 1972.''

EFFECTIVE DATE OF 1969 AMENDMENTS

Section 805(h) of Pub. L. 91–172, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendments made by subsections (a), (b), (c), (d), and (e) [amending this section] shall apply with respect to remuneration paid after December 31, 1969.

''(2) The amendment made by subsection (f) [amending this section and section 6051 of this title] applies to wages paid after April 30, 1970.

''(3) Subsection (*o*) of section 3402 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], added by subsection (g) of this subsection, shall apply to payments made after December 31, 1970. Subsection (p) of such section 3402, added by subsection (g) of this section, shall apply to payments made after June 30, 1970.''

Section 6(b) of Pub. L. 91–53 provided that: ''The amendments made by this section [amending this section] shall apply with respect to wages paid after July 31, 1969, and before January 1, 1970.''

Section 2(b) of Pub. L. 91–36 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to wages paid after June 30, 1969.''

EFFECTIVE DATE OF 1966 AMENDMENT

Section 101(e)(6) of Pub. L. 89–368 provided that: ''The amendments made by paragraphs (1) and (2) of this subsection [amending this section] shall apply only with respect to remuneration paid after December 31, 1966, but only with respect to withholding exemptions based on estimation years beginning after such date.''

Section 101(g) of Pub. L. 89–368 provided that: ''The amendments made by this section (other than subsection (e) [amending this section]) shall apply only with respect to remuneration paid after April 30, 1966.''

EFFECTIVE DATE OF 1965 AMENDMENTS

Amendment by Pub. L. 89–212 effective only with respect to tips received after 1965, see section 6 of Pub. L. 89–212, set out as a note under section 3201 of this title.

Amendment by Pub. L. 89–97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89–97, set out as an Effective Date note under section 6053 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 302(d) of Pub. L. 88–272 provided that: ''The amendments made by subsections (a) and (b) of this section [amending this section] shall apply with respect to remuneration paid after the seventh day following the date of the enactment of this Act [Feb. 26, 1964]. The amendment made by subsection (c) of this section [amending section 1441 of this title] shall apply with respect to payments made after the seventh day following the date of the enactment of this Act.''

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–256 applicable with respect to wages paid after Dec. 31, 1961, see section 110(h)(4) of Pub. L. 87–256, set out as a note under section 3401 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Section 3 of act Aug. 9, 1955, provided that: ''The amendment made by section 2 [amending this section] shall be applicable only with respect to remuneration paid after the date of enactment of this Act [Aug. 9, 1955].''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

WITHHOLDING ALLOWANCES TO REFLECT NEW RATE SCHEDULES

Section 1581(a) of Pub. L. 99–514 provided that: ''The Secretary of the Treasury or his delegate shall modify the withholding schedules and withholding exemption certificates under section 3402 of the Internal Revenue Code of 1954 [now 1986] to better approximate actual tax liability under the amendments made by this Act [see Tables for classification].''

EMPLOYER'S RESPONSIBILITY UPON FAILURE OF EMPLOYEE TO FILE REVISED WITHHOLDING ALLOWANCE CERTIFICATE BEFORE OCT. 1, 1987

Section 1581(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1015(p), Nov. 10, 1988, 102 Stat. 3572, provided that: ''If an employee has not filed a revised withholding allowance certificate before October 1, 1987, the employer shall withhold income taxes from the employee's wages—

''(1) as if the employee claimed 1 withholding allowance, if the employee checked the 'single' box on the employee's previous withholding allowance certificate, or

''(2) as if the employee claimed 2 withholding allowances, if the employee checked the 'married' box on the employee's previous withholding allowance certificate.

The preceding sentence shall not apply if its application would result in an increase in the number of withholding allowances for the employee.''

FAILURE TO DEDUCT AND WITHHOLD UNDER A DUTY CREATED OR INCREASED BY TAX REFORM ACT OF 1976

Section 304 of Pub. L. 95–30, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''No person shall be liable in respect of any failure to deduct and withhold under section 3402 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to income tax collected at source) on remuneration paid before January 1, 1977, to the extent that the duty to deduct and withhold was created or increased by any provision of the Tax Reform Act of 1976 [Pub. L. 94–455].''

WAGES PAID DURING 1972 AND AFTER 1972

Section 805(b)(3), (4) of Pub. L. 91–172, title VIII, Dec. 30, 1969, 83 Stat. 704, which provided for section 3402(b)(1) withholding rates of 13.50; 26.90; 29.20; 58.30; 175.00; 350.00; 700.00; and 1.90, effective with respect to wages during 1972, and withholding rates of 14.40; 28.80; 31.30; 62.50; 187.50; 375.00; 750.00; and 2.10, effective with respect to wages paid after 1972, was repealed by section 208(b)(2) of Pub. L. 92–178.

TRANSITIONAL DETERMINATION STATUS DATE

Section 101(f) of Pub. L. 89–368, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Notwithstanding section 3402(f)(3)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], a withholding exemption certificate furnished the employer after the date of the enactment of this Act [Mar. 15, 1966] and

before May 1, 1966, shall take effect with respect to the first payment of wages made on or after May 1, 1966, or the 10th day after the date on which such certificate is furnished to the employer, whichever is later, and at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is furnished.''

MEANING OF TERMS

Section 1 of act Aug. 9, 1955, provided that: ''The terms used in this Act [amending subsecs. (a) and (j) of this section] shall have the same meaning as when used in the Internal Revenue Code.''

§ 3403. Liability for tax

The employer shall be liable for the payment of the tax required to be deducted and withheld under this chapter, and shall not be liable to any person for the amount of any such payment.

(Aug. 16, 1954, ch. 736, 68A Stat. 469; Pub. L. 97–248, title III, §§ 307(a)(2), 308(a), Sept. 3, 1982, 96 Stat. 589, 591; Pub. L. 98–67, title I, § 102(a), Aug. 5, 1983, 97 Stat. 369.)

AMENDMENTS

1983—Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, this section is amended by striking out ''this chapter'' and inserting in lieu thereof ''this subchapter''. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§ 301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

§ 3404. Return and payment by governmental employer

If the employer is the United States, or a State, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages may be made by any officer or employee of the United States, or of such State, or political subdivision, or of the District of Columbia, or of such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose.

(Aug. 16, 1954, ch. 736, 68A Stat. 469; Pub. L. 94–455, title XIX, § 1903(c), Oct. 4, 1976, 90 Stat. 1810.)

AMENDMENTS

1976—Pub. L. 94–455 struck out ''Territory'' after ''or a State'' and ''of such State''.

§ 3405. Special rules for pensions, annuities, and certain other deferred income

(a) Periodic payments

(1) Withholding as if payment were wages

The payor of any periodic payment (as defined in subsection (e)(2)) shall withhold from such payment the amount which would be required to be withheld from such payment if such payment were a payment of wages by an employer to an employee for the appropriate payroll period.

(2) Election of no withholding

An individual may elect to have paragraph (1) not apply with respect to periodic payments made to such individual. Such an election shall remain in effect until revoked by such individual.

(3) When election takes effect

Any election under this subsection (and any revocation of such an election) shall take effect as provided by subsection (f)(3) of section 3402 for withholding exemption certificates.

(4) Amount withheld where no withholding exemption certificate in effect

In the case of any payment with respect to which a withholding exemption certificate is not in effect, the amount withheld under paragraph (1) shall be determined by treating the payee as a married individual claiming 3 withholding exemptions.

(b) Nonperiodic distribution

(1) Withholding

The payor of any nonperiodic distribution (as defined in subsection (e)(3)) shall withhold from such distribution an amount equal to 10 percent of such distribution.

(2) Election of no withholding

(A) In general

An individual may elect not to have paragraph (1) apply with respect to any nonperiodic distribution.

(B) Scope of election

An election under subparagraph (A)—

(i) except as provided in clause (ii), shall be on a distribution-by-distribution basis, or

(ii) to the extent provided in regulations, may apply to subsequent nonperiodic distributions made by the payor to the payee under the same arrangement.

(c) Eligible rollover distributions

(1) In general

In the case of any designated distribution which is an eligible rollover distribution—

(A) subsections (a) and (b) shall not apply, and

(B) the payor of such distribution shall withhold from such distribution an amount equal to 20 percent of such distribution.

(2) Exception

Paragraph (1)(B) shall not apply to any distribution if the distributee elects under section 401(a)(31)(A) to have such distribution paid directly to an eligible retirement plan.

(3) Eligible rollover distribution

For purposes of this subsection, the term ''eligible rollover distribution'' has the meaning given such term by section 402(f)(2)(A).

(d) Liability for withholding

(1) In general

Except as provided in paragraph (2), the payor of a designated distribution (as defined

in subsection (e)(1)) shall withhold, and be liable for, payment of the tax required to be withheld under this section.

(2) Plan administrator liable in certain cases

(A) In general

In the case of any plan to which this paragraph applies, paragraph (1) shall not apply and the plan administrator shall withhold, and be liable for, payment of the tax unless the plan administrator—

(i) directs the payor to withhold such tax, and

(ii) provides the payor with such information as the Secretary may require by regulations.

(B) Plans to which paragraph applies

This paragraph applies to any plan described in, or which at any time has been determined to be described in—

(i) section 401(a),

(ii) section 403(a),

(iii) section 301(d) of the Tax Reduction Act of 1975, or

(iv) section 457(b) and which is maintained by an eligible employer described in section 457(e)(1)(A).

(e) Definitions and special rules

For purposes of this section—

(1) Designated distribution

(A) In general

Except as provided in subparagraph (B), the term ''designated distribution'' means any distribution or payment from or under—

(i) an employer deferred compensation plan,

(ii) an individual retirement plan (as defined in section 7701(a)(37)), or

(iii) a commercial annuity.

(B) Exceptions

The term ''designated distribution'' shall not include—

(i) any amount which is wages without regard to this section,

(ii) the portion of a distribution or payment which it is reasonable to believe is not includible in gross income, and

(iii) any amount which is subject to withholding under subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and foreign corporations) by the person paying such amount or which would be so subject but for a tax treaty, or

(iv) any distribution described in section 404(k)(2).

For purposes of clause (ii), any distribution or payment from or under an individual retirement plan (other than a Roth IRA) shall be treated as includible in gross income.

(2) Periodic payment

The term ''periodic payment'' means a designated distribution which is an annuity or similar periodic payment.

(3) Nonperiodic distribution

The term ''nonperiodic distribution'' means any designated distribution which is not a periodic payment.

[(4) Repealed. Pub. L. 102–318, title V, § 521(b)(38), July 3, 1992, 106 Stat. 312]

(5) Employer deferred compensation plan

The term ''employer deferred compensation plan'' means any pension, annuity, profit-sharing, or stock bonus plan or other plan deferring the receipt of compensation.

(6) Commercial annuity

The term ''commercial annuity'' means an annuity, endowment, or life insurance contract issued by an insurance company licensed to do business under the laws of any State.

(7) Plan administrator

The term ''plan administrator'' has the meaning given such term by section 414(g).

(8) Maximum amount withheld

The maximum amount to be withheld under this section on any designated distribution shall not exceed the sum of the amount of money and the fair market value of other property (other than securities of the employer corporation) received in the distribution. No amount shall be required to be withheld under this section in the case of any designated distribution which consists only of securities of the employer corporation and cash (not in excess of $200) in lieu of financial shares. For purposes of this paragraph, the term ''securities of the employer corporation'' has the meaning given such term by section 402(e)(4)(E).

(9) Separate arrangements to be treated separately

If the payor has more than 1 arrangement under which designated distributions may be made to any individual, each such arrangement shall be treated separately.

(10) Time and manner of election

(A) In general

Any election and any revocation under this section shall be made at such time and in such manner as the Secretary shall prescribe.

(B) Payor required to notify payee of rights to elect

(i) Periodic payments

The payor of any periodic payment—

(I) shall transmit to the payee notice of the right to make an election under subsection (a) not earlier than 6 months before the first of such payments and not later than when making the first of such payments,

(II) if such a notice is not transmitted under subclause (I) when making such first payment, shall transmit such a notice when making such first payment, and

(III) shall transmit to payees, not less frequently than once each calendar year, notice of their rights to make elections under subsection (a) and to revoke such elections.

(ii) Nonperiodic distributions

The payor of any nonperiodic distribution shall transmit to the payee notice of

the right to make any election provided in subsection (b) at the time of the distribution (or at such earlier time as may be provided in regulations).

(iii) Notice

Any notice transmitted pursuant to this subparagraph shall be in such form and contain such information as the Secretary shall prescribe.

(11) Withholding includes deduction

The terms ''withholding'', ''withhold'', and ''withheld'' include ''deducting'', ''deduct'', and ''deducted''.

(12) Failure to provide correct TIN

If—

(A) a payee fails to furnish his TIN to the payor in the manner required by the Secretary, or

(B) the Secretary notifies the payor before any payment or distribution that the TIN furnished by the payee is incorrect,

no election under subsection (a)(2) or (b)(2) shall be treated as in effect and subsection (a)(4) shall not apply to such payee.

(13) Election may not be made with respect to certain payments outside the United States or its possessions

(A) In general

Except as provided in subparagraph (B), in the case of any periodic payment or nonperiodic distribution which is to be delivered outside of the United States and any possession of the United States, no election may be made under subsection (a)(2) or (b)(2) with respect to such payment.

(B) Exception

Subparagraph (A) shall not apply if the recipient certifies to the payor, in such manner as the Secretary may prescribe, that such person is not—

(i) a United States citizen or a resident alien of the United States, or

(ii) an individual to whom section 877 applies.

(f) Withholding to be treated as wage withholding under section 3402 for other purposes

For purposes of this chapter (and so much of subtitle F as relates to this chapter)—

(1) any designated distribution (whether or not an election under this section applies to such distribution) shall be treated as if it were wages paid by an employer to an employee with respect to which there has been withholding under section 3402, and

(2) in the case of any designated distribution not subject to withholding under this section by reason of an election under this section, the amount withheld shall be treated as zero.

(Added Pub. L. 97–248, title III, § 334(a), Sept. 3, 1982, 96 Stat. 623; amended Pub. L. 98–369, div. A, title V, § 542(c), title VII, §§ 714(j)(1), (4), (5), 722(h)(4)(A), July 18, 1984, 98 Stat. 891, 962, 963, 976; Pub. L. 99–514, title XI, § 1102(e)(1), title XII, § 1234(b)(1), title XVIII, § 1875(c)(10), Oct. 22, 1986, 100 Stat. 2416, 2566, 2895; Pub. L. 100–647, title I, § 1012(bb)(2)(A)–(C), Nov. 10, 1988, 102 Stat. 3534; Pub. L. 102–318, title V, §§ 521(b)(36)–(40), 522(b)(1)–(2)(C), July 3, 1992, 106 Stat. 312–314; Pub. L. 104–188, title I, § 1704(t)(71), Aug. 20, 1996, 110 Stat. 1891; Pub. L. 106–554, § 1(a)(7) [title III, § 314(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643; Pub. L. 107–16, title VI, § 641(a)(1)(D)(ii), (iii), June 7, 2001, 115 Stat. 119.)

REFERENCES IN TEXT

Section 301(d) of the Tax Reduction Act of 1975, referred to in subsec. (d)(2)(B)(iii), is section 301(d) of Pub. L. 94–12, Mar. 29, 1975, 89 Stat. 26, relating to plan requirements for taxpayers electing additional credits, which was set out as a note under section 46 of this title and was repealed by Pub. L. 95–600, title I, § 141(f)(1), Nov. 6, 1978, 92 Stat. 2795.

AMENDMENTS

2001—Subsec. (c)(3). Pub. L. 107–16, § 641(a)(1)(D)(ii), reenacted heading without change and amended text of par. (3) generally. Prior to amendment, text read as follows: ''For purposes of this subsection, the term 'eligible rollover distribution' has the meaning given such term by section 402(f)(2)(A) (or in the case of an annuity contract under section 403(b), a distribution from such contract described in section 402(f)(2)(A)).''

Subsec. (d)(2)(B)(iv). Pub. L. 107–16, § 641(a)(1)(D)(iii), added cl. (iv).

2000—Subsec. (e)(1)(B). Pub. L. 106–554 inserted ''(other than a Roth IRA)'' after ''individual retirement plan'' in concluding provisions.

1996—Subsec. (e)(12). Pub. L. 104–188 substituted ''(b)(2)'' for ''(b)(3)'' in closing provisions.

1992—Subsec. (a). Pub. L. 102–318, § 521(b)(36), substituted ''Periodic payments'' for ''Pensions, annuities, etc.'' in heading.

Subsec. (a)(1). Pub. L. 102–318, § 522(b)(2)(A), substituted ''subsection (e)(2)'' for ''subsection (d)(2)''.

Subsec. (b)(1). Pub. L. 102–318, §§ 521(b)(37)(A), 522(b)(2)(B), substituted ''subsection (e)(3)'' for ''subsection (d)(3)'' and ''an amount equal to 10 percent of such distribution'' for ''the amount determined under paragraph (2)''.

Subsec. (b)(2), (3). Pub. L. 102–318, § 521(b)(37)(B), redesignated par. (3) as (2) and struck out former par. (2) which related to amount of withholding.

Subsec. (c). Pub. L. 102–318, § 522(b)(1), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 102–318, § 522(b)(1), (2)(C), redesignated subsec. (c) as (d) and substituted ''subsection (e)(1)'' for ''subsection (d)(1)'' in par. (1). Former subsec. (d) redesignated (e).

Pub. L. 102–318, § 521(b)(40), substituted ''(b)(2)'' for ''(b)(3)'' in par. (13)(A).

Pub. L. 102–318, § 521(b)(39), amended par. (8) generally. Prior to amendment, par. (8) read as follows: ''The maximum amount to be withheld under this section on any designated distribution shall not exceed the sum of the amount of money and the fair market value of other property (other than employer securities of the employer corporation (within the meaning of section 402(a)(3))) received in the distribution. No amount shall be required to be withheld under this section in the case of any designated distribution which consists only of employer securities of the employer corporation (within the meaning of section 402(a)(3)) and cash (not in excess of $200) in lieu of fractional shares.''

Pub. L. 102–318, § 521(b)(38), struck out par. (4) which defined ''qualified total distribution'' and provided special rule for accumulated deductible employee contributions in determining qualified total distribution.

Subsecs. (e), (f). Pub. L. 102–318, § 522(b)(1), redesignated subsecs. (d) and (e) as (e) and (f), respectively.

1988—Subsec. (d)(13). Pub. L. 100–647, § 1012(bb)(2)(C), substituted ''United States or its possessions'' for ''United States'' in heading.

Subsec. (d)(13)(A). Pub. L. 100–647, § 1012(bb)(2)(A), substituted ''the United States and any possession of the United States'' for ''the United States''.

Subsec. (d)(13)(B)(i). Pub. L. 100–647, § 1012(bb)(2)(B), amended cl. (i) generally, substituting ''or a resident alien of the United States'' for ''who is a bona fide resident of a foreign country''.

1986—Subsec. (d)(1)(B). Pub. L. 99–514, § 1102(e)(1), inserted last sentence for ''For purposes of clause (ii), any distribution or payment from or under an individual retirement plan shall be treated as includible in gross income.''

Subsec. (d)(1)(B)(iii), (iv). Pub. L. 99–514, § 1875(c)(10), reenacted cl. (iii) relating to amounts subject to withholding under subchapter A of chapter 3 as cl. (iii) and reenacted cl. (iii) relating to distribution described in section 404(k)(2) as cl. (iv).

Subsec. (d)(13). Pub. L. 99–514, § 1234(b)(1), added par. (13).

1984—Subsec. (b)(2)(C). Pub. L. 98–369, § 714(j)(1), substituted ''nonperiodic distribution'' for ''distribution described in subparagraph (B)'' and ''subparagraph (A) or (B) (as the case may be) shall be applied by taking into account'' for ''the Secretary, in prescribing tables or procedures under paragraph (1), shall take into account'', designated phrase ''which is made by reason of a participant's death'' as cl. (i) and added cl. (ii).

Subsec. (d)(1)(B)(iii). Pub. L. 98–369, § 714(j)(4), added cl. (iii) relating to amounts subject to withholding under subchapter A of chapter 3.

Pub. L. 98–369, § 542(c), added cl. (iii) relating to distributions described in section 404(k)(2). Directory language that section (d)(1)(B) be amended by striking out ''and'' at end of cl. (i) and substituting '', or'' for the period at end of cl. (ii) could not be executed in view of prior amendment by section 714(j)(4) of Pub. L. 98–369, which struck out ''and'' at end of cl. (i) and substituted '', and'' for the period at end of cl. (ii).

Subsec. (d)(8). Pub. L. 98–369, § 714(j)(5), freed from withholding requirement any designated distribution which consists only of employer securities of the employer corporation (within the meaning of section 402(a)(3)) and cash (not in excess of $200) in lieu of fractional shares.

Subsec. (d)(12). Pub. L. 98–369, § 722(h)(4), added par. (12).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 1(a)(7) [title III, § 314(g)] of Pub. L. 106–554, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 521(b)(36)–(40) of Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

Amendment by section 522(b)(1)–(2)(C) of Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(bb)(2)(D) of Pub. L. 100–647 provided that: ''The amendments made by this paragraph [amending this section] shall apply to distributions made after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1102(e)(1) of Pub. L. 99–514 applicable to contributions and distributions for taxable years beginning after Dec. 31, 1986, see section 1102(g) of Pub. L. 99–514, set out as a note under section 219 of this title.

Section 1234(b)(2) of Pub. L. 99–514 provided that: ''The amendment made by this subsection [amending this section] shall apply to payments after December 31, 1986.''

Amendment by section 1875(c)(10) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 542(c) of Pub. L. 98–369 applicable to taxable years beginning after July 18, 1984, see section 542(d) of Pub. L. 98–369, set out as a note under section 404 of this title.

Amendment by section 714(j)(1), (4), (5) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 722(h)(4)(A) of Pub. L. 98–369 applicable to payments or distributions after Dec. 31, 1984, unless the payor elects to have such amendment apply to payments or distributions before Jan. 1, 1985, see section 722(h)(5)(B) of Pub. L. 98–369, set out as a note under section 643 of this title.

EFFECTIVE DATE

Section 334(e) of Pub. L. 97–248, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) AMENDMENT MADE BY SUBSECTIONS (a) AND (d).—Except as provided in paragraph (4), the amendment made by subsections (a) [enacting this section] and (d) [amending section 3402 of this title] shall apply to payments or other distributions made after December 31, 1982.

''(2) AMENDMENTS MADE BY SUBSECTION (b).—Except as provided in paragraph (4), the amendments made by subsection (b) [amending section 6047 of this title] shall take effect on January 1, 1983.

''(3) AMENDMENTS MADE BY SUBSECTION (c).—The amendments made by subsection (c) [enacting section 6704 of this title] shall take effect on January 1, 1985.

''(4) PERIODIC PAYMENTS BEGINNING BEFORE JANUARY 1, 1983.—For purposes of section 3405(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the case of periodic payments beginning before January 1, 1983, the first periodic payment after December 31, 1982, shall be treated as the first such periodic payment.

''(5) DELAY IN APPLICATION.—The Secretary of the Treasury shall prescribe such regulations which delay (but not beyond June 30, 1983) the application of some or all of the amendments made by this section with respect to any payor until such time as such payor is able to comply without undue hardship with the requirements of such provisions.

''(6) WAIVER OF PENALTY.—No penalty shall be assessed under section 6672 with respect to any failure to withhold as required by the amendments made by this section if such failure was before July 1, 1983, and if the person made a good faith effort to comply with such withholding requirements.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147

and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 3406. Backup withholding

(a) Requirement to deduct and withhold

(1) In general

In the case of any reportable payment, if—

(A) the payee fails to furnish his TIN to the payor in the manner required,

(B) the Secretary notifies the payor that the TIN furnished by the payee is incorrect,

(C) there has been a notified payee underreporting described in subsection (c), or

(D) there has been a payee certification failure described in subsection (d),

then the payor shall deduct and withhold from such payment a tax equal to the product of the fourth lowest rate of tax applicable under section 1(c) and such payment.

(2) Subparagraphs (C) and (D) of paragraph (1) apply only to interest and dividend payments

Subparagraphs (C) and (D) of paragraph (1) shall apply only to reportable interest or dividend payments.

(b) Reportable payment, etc.

For purposes of this section—

(1) Reportable payment

The term ''reportable payment'' means—

(A) any reportable interest or dividend payment, and

(B) any other reportable payment.

(2) Reportable interest or dividend payment

(A) In general

The term ''reportable interest or dividend payment'' means any payment of a kind, and to a payee, required to be shown on a return required under—

(i) section 6049(a) (relating to payments of interest),

(ii) section 6042(a) (relating to payments of dividends), or

(iii) section 6044 (relating to payments of patronage dividends) but only to the extent such payment is in money.

(B) Special rule for patronage dividends

For purposes of subparagraphs (C) and (D) of subsection (a)(1), the term ''reportable interest or dividend payment'' shall not include any payment to which section 6044 (relating to patronage dividends) applies unless 50 percent or more of such payment is in money.

(3) Other reportable payment

The term ''other reportable payment'' means any payment of a kind, and to a payee, required to be shown on a return required under—

(A) section 6041 (relating to certain information at source),

(B) section 6041A(a) (relating to payments of remuneration for services),

(C) section 6045 (relating to returns of brokers),

(D) section 6050A (relating to reporting requirements of certain fishing boat operators), but only to the extent such payment is in money and represents a share of the proceeds of the catch,

(E) section 6050N (relating to payments of royalties), or

(F) section 6050W (relating to returns relating to payments made in settlement of payment card transactions).

(4) Whether payment is of reportable kind determined without regard to minimum amount

The determination of whether any payment is of a kind required to be shown on a return described in paragraph (2) or (3) shall be made without regard to any minimum amount which must be paid before a return is required.

(5) Exception for certain small payments

To the extent provided in regulations, the term ''reportable payment'' shall not include any payment which—

(A) does not exceed $10, and

(B) if determined for a 1-year period, would not exceed $10.

(6) Other reportable payments include payments described in section 6041(a) or 6041A(a) only where aggregate for calendar year is $600 or more

Any payment of a kind required to be shown on a return required under section 6041(a) or 6041A(a) which is made during any calendar year shall be treated as a reportable payment only if—

(A) the aggregate amount of such payment and all previous payments described in such sections by the payor to the payee during such calendar year equals or exceeds $600,

(B) the payor was required under section 6041(a) or 6041A(a) to file a return for the preceding calendar year with respect to payments to the payee, or

(C) during the preceding calendar year, the payor made reportable payments to the payee with respect to which amounts were required to be deducted and withheld under subsection (a).

(7) Exception for certain window payments of interest, etc.

For purposes of subparagraphs (C) and (D) of subsection (a)(1), the term ''reportable interest or dividend payment'' shall not include any payment—

(A) in redemption of a coupon on a bearer instrument or in redemption of a United States savings bond, or

(B) to the extent provided in regulations, of interest on instruments similar to those described in subparagraph (A).

The preceding sentence shall not apply for purposes of determining whether there is payee underreporting described in subsection (c).

(c) Notified payee underreporting with respect to interest and dividends

(1) Notified payee underreporting

If—

(A) the Secretary determines with respect to any payee that there has been payee underreporting,

(B) at least 4 notices have been mailed by the Secretary to the payee (over a period of at least 120 days) with respect to the underreporting, and

(C) in the case of any payee who has filed a return for the taxable year, any deficiency of tax attributable to such failure has been assessed,

the Secretary may notify payors of reportable interest or dividend payments with respect to such payee of the requirement to deduct and withhold under subsection (a)(1)(C) (but not the reasons for the withholding under subsection (a)(1)(C)).

(2) Payee underreporting defined

For purposes of this section, there has been payee underreporting if for any taxable year the Secretary determines that—

(A) the payee failed to include in his return of tax under chapter 1 for such year any portion of a reportable interest or dividend payment required to be shown on such return, or

(B) the payee may be required to file a return for such year and to include a reportable interest or dividend payment in such return, but failed to file such return.

(3) Determination by secretary to stop (or not to start) withholding

(A) In general

If the Secretary determines that—

(i) there was no payee underreporting,

(ii) any payee underreporting has been corrected (and any tax, penalty, or interest with respect to the payee underreporting has been paid),

(iii) withholding under subsection (a)(1)(C) has caused (or would cause) undue hardship to the payee and it is unlikely that any payee underreporting by such payee will occur again, or

(iv) there is a bona fide dispute as to whether there has been any payee underreporting,

then the Secretary shall take the action described in subparagraph (B).

(B) Secretary to take action to stop (or not to start) withholding

For purposes of subparagraph (A), if at the time of the Secretary's determination under subparagraph (A)—

(i) no notice has been given under paragraph (1) to any payor with respect to the underreporting, the Secretary shall not give any such notice, or

(ii) if such notice has been given, the Secretary shall—

(I) provide the payee with a written certification that withholding under subsection (a)(1)(C) is to stop, and

(II) notify the applicable payors (and brokers) that such withholding is to stop.

(C) Time for taking action where notice to payor has been given

In any case where notice has been given under paragraph (1) to any payor with respect to any underreporting, if the Secretary makes a determination under subparagraph (A) during the 12-month period ending on October 15 of any calendar year—

(i) except as provided in clause (ii), the Secretary shall take the action described in subparagraph (B)(ii) to bring about the stopping of withholding no later than December 1 of such calendar year, or

(ii) in the case of—

(I) a no payee underreporting determination under clause (i) of subparagraph (A), or

(II) a hardship determination under clause (iii) of subparagraph (A),

such action shall be taken no later than the 45th day after the day on which the Secretary made the determination.

(D) Opportunity to request determination

The Secretary shall prescribe procedures under which—

(i) a payee may request a determination under subparagraph (A), and

(ii) the payee may provide information with respect to such request.

(4) Payor notifies payee of withholding because of payee underreporting

Any payor required to withhold any tax under subsection (a)(1)(C) shall, at the time such withholding begins, notify the payee of such withholding.

(5) Payee may be required to notify Secretary who his payors and brokers are

For purposes of this section, the Secretary may require any payee of reportable interest or dividend payments who is subject to withholding under subsection (a)(1)(C) to notify the Secretary of—

(A) all payors from whom the payee receives reportable interest or dividend payments, and

(B) all brokers with whom the payee has accounts which may involve reportable interest or dividend payments.

The Secretary may notify any such broker that such payee is subject to withholding under subsection (a)(1)(C).

(d) Interest and dividend backup withholding applies to new accounts and instruments unless payee certifies that he is not subject to such withholding

(1) In general

There is a payee certification failure unless the payee has certified to the payor, under penalty of perjury, that such payee is not subject to withholding under subsection (a)(1)(C).

(2) Special rules for readily tradable instruments

(A) In general

Subsection (a)(1)(D) shall apply to any reportable interest or dividend payment to any payee on any readily tradable instrument if (and only if) the payor was notified by a broker under subparagraph (B) or no certification was provided to the payor by the payee under paragraph (1) and—

(i) such instrument was acquired directly by the payee from the payor, or

(ii) such instrument is held by the payor as nominee for the payee.

(B) Broker notifies payor

If—

(i) a payee acquires any readily tradable instrument through a broker, and

(ii) with respect to such acquisition—

(I) the payee fails to furnish his TIN to the broker in the manner required under subsection (a)(1)(A),

(II) the Secretary notifies such broker before such acquisition that the TIN furnished by the payee is incorrect,

(III) the Secretary notifies such broker before such acquisition that such payee is subject to withholding under subsection (a)(1)(C), or

(IV) the payee does not provide a certification to such broker under subparagraph (C),

such broker shall, within such period as the Secretary may prescribe by regulations (but not later than 15 days after such acquisition), notify the payor that such payee is subject to withholding under subparagraph (A), (B), (C), or (D) of subsection (a)(1), respectively.

(C) Time for payee to provide certification to broker

In the case of any readily tradable instrument acquired by a payee through a broker, the certification described in paragraph (1) may be provided by the payee to such broker—

(i) at any time after the payee's account with the broker was established and before the acquisition of such instrument, or

(ii) in connection with the acquisition of such instrument.

(3) Exception for existing accounts, etc.

This subsection and subsection (a)(1)(D) shall not apply to any reportable interest or dividend payment which is paid or credited—

(A) in the case of interest or any other amount of a kind reportable under section 6049, with respect to any account (whatever called) established before January 1, 1984, or with respect to any instrument acquired before January 1, 1984,

(B) in the case of dividends or any other amount reportable under section 6042, on any stock or other instrument acquired before January 1, 1984, or

(C) in the case of patronage dividends or other amounts of a kind reportable under section 6044, with respect to any membership acquired, or contract entered into, before January 1, 1984.

(4) Exception for readily tradable instruments acquired through existing brokerage accounts

Subparagraph (B) of paragraph (2) shall not apply with respect to a readily tradable instrument which was acquired through an account with a broker if—

(A) such account was established before January 1, 1984, and

(B) during 1983, such broker bought or sold instruments for the payee (or acted as a nominee for the payee) through such account.

The preceding sentence shall not apply with respect to any readily tradable instrument acquired through such account after the broker was notified by the Secretary that the payee is subject to withholding under subsection (a)(1)(C).

(e) Period for which withholding is in effect

(1) Failure to furnish TIN

In the case of any failure by a payee to furnish his TIN to a payor in the manner required, subsection (a) shall apply to any reportable payment made by such payor during the period during which the TIN has not been furnished in the manner required. The Secretary may require that a TIN required to be furnished under subsection (a)(1)(A) be provided under penalties of perjury only with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting.

(2) Notification of incorrect number

In any case in which the Secretary notifies the payor that the TIN furnished by the payee is incorrect, subsection (a) shall apply to any reportable payment made by such payor—

(A) after the close of the 30th day after the day on which the payor received such notification, and

(B) before the payee furnishes another TIN in the manner required.

(3) Notified payee underreporting described in subsection (c)

(A) In general

In the case of any notified payee underreporting described in subsection (c), subsection (a) shall apply to any reportable interest or dividend payment made—

(i) after the close of the 30th day after the day on which the payor received notification from the Secretary of such underreporting, and

(ii) before the stop date.

(B) Stop date

For purposes of this subsection, the term ''stop date'' means the determination effective date or, if later, the earlier of—

(i) the day on which the payor received notification from the Secretary under subsection (c)(3)(B) to stop withholding, or

(ii) the day on which the payor receives from the payee a certification provided by the Secretary under subsection (c)(3)(B).

(C) Determination effective date

For purposes of this subsection—

(i) In general

Except as provided in clause (ii), the determination effective date of any determination under subsection (c)(3)(A) which is made during the 12-month period ending on October 15 of any calendar year shall be the first January 1 following such October 15.

(ii) Determination that there was no underreporting; hardship

In the case of any determination under clause (i) or (iii) of subsection (c)(3)(A), the determination effective date shall be the date on which the Secretary's determination is made.

(4) Failure to provide certification that payee is not subject to withholding

(A) In general

In the case of any payee certification failure described in subsection (d)(1), subsection (a) shall apply to any reportable interest or dividend payment made during the period during which the certification described in subsection (d)(1) has not been furnished to the payor.

(B) Special rule for readily tradable instruments acquired through broker where notification

In the case of any readily tradable instrument acquired by the payee through a broker, the period described in subparagraph (A) shall start with payments to the payee made after the close of the 30th day after the payor receives notification from a broker under subsection (d)(2)(B).

(5) 30-day grace periods

(A) Start-up

If the payor elects the application of this subparagraph with respect to the payee, subsection (a) shall also apply to any reportable payment made during the 30-day period described in paragraph (2)(A), (3)(A), or (4)(B).

(B) Stopping

Unless the payor elects not to have this subparagraph apply with respect to the payee, subsection (a) shall also apply to any reportable payment made after the close of the period described in paragraph (1), (2), or (4) (as the case may be) and before the 30th day after the close of such period. A similar rule shall also apply with respect to the period described in paragraph (3)(A) where the stop date is determined under clause (i) or (ii) of paragraph (3)(B).

(C) Election of shorter grace period

The payor may elect a period shorter than the grace period set forth in subparagraph (A) or (B), as the case may be.

(f) Confidentiality of information

(1) In general

No person may use any information obtained under this section (including any failure to certify under subsection (d)) except for purposes of meeting any requirement under this section or (subject to the safeguards set forth in section 6103) for purposes permitted under section 6103.

(2) Cross reference

For provision providing for civil damages for violation of paragraph (1), see section 7431.

(g) Exceptions

(1) Payments to certain payees

Subsection (a) shall not apply to any payment made to—

(A) any organization or governmental unit described in subparagraph (B), (C), (D), (E), or (F) of section 6049(b)(4), or

(B) any other person specified in regulations.

(2) Amounts for which withholding otherwise required

Subsection (a) shall not apply to any amount for which withholding is otherwise required by this title.

(3) Exemption while waiting for TIN

The Secretary shall prescribe regulations for exemptions from the tax imposed by subsection (a) during the period during which a person is waiting for receipt of a TIN.

(h) Other definitions and special rules

For purposes of this section—

(1) Obviously incorrect number

A person shall be treated as failing to furnish his TIN if the TIN furnished does not contain the proper number of digits.

(2) Payee furnishes 2 incorrect TINs

If the payee furnishes the payor 2 incorrect TINs in any 3-year period, the payor shall, after receiving notice of the second incorrect TIN, treat the payee as not having furnished another TIN under subsection (e)(2)(B) until the day on which the payor receives notification from the Secretary that a correct TIN has been furnished.

(3) Joint payees

Except to the extent otherwise provided in regulations, any payment to joint payees shall be treated as if all the payment were made to the first person listed in the payment.

(4) Payor defined

The term ''payor'' means, with respect to any reportable payment, a person required to file a return described in paragraph (2) or (3) of subsection (b) with respect to such payment.

(5) Broker

(A) In general

The term ''broker'' has the meaning given to such term by section 6045(c)(1).

(B) Only 1 broker per acquisition

If, but for this subparagraph, there would be more than 1 broker with respect to any acquisition, only the broker having the closest contact with the payee shall be treated as the broker.

(C) Payor not treated as broker

In the case of any instrument, such term shall not include any person who is the payor with respect to such instrument.

(D) Real estate broker not treated as a broker

Except as provided by regulations, such term shall not include any real estate broker (as defined in section 6045(e)(2)).

(6) Readily tradable instrument

The term ''readily tradable instrument'' means—

(A) any instrument which is part of an issue any portion of which is traded on an

established securities market (within the meaning of section 453(f)(5)), and

(B) except as otherwise provided in regulations prescribed by the Secretary, any instrument which is regularly quoted by brokers or dealers making a market.

(7) Original issue discount

To the extent provided in regulations, rules similar to the rules of paragraph (6) of section 6049(d) shall apply.

(8) Requirement of notice to payee

Whenever the Secretary notifies a payor under paragraph (1)(B) of subsection (a) that the TIN furnished by any payee is incorrect, the Secretary shall at the same time furnish a copy of such notice to the payor, and the payor shall promptly furnish such copy to the payee.

(9) Requirement of notice to Secretary

If the Secretary notifies a payor under paragraph (1)(B) of subsection (a) that the TIN furnished by any payee is incorrect and such payee subsequently furnishes another TIN to the payor, the payor shall promptly notify the Secretary of the other TIN so furnished.

(10) Coordination with other sections

For purposes of section 31, this chapter (other than section 3402(n)), and so much of subtitle F (other than section 7205) as relates to this chapter, payments which are subject to withholding under this section shall be treated as if they were wages paid by an employer to an employee (and amounts deducted and withheld under this section shall be treated as if deducted and withheld under section 3402).

(i) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 98–67, title I, § 104(a), Aug. 5, 1983, 97 Stat. 371; amended Pub. L. 98–369, div. A, title I, § 152(a), title VII, § 722(h)(1), (2), July 18, 1984, 98 Stat. 691, 975; Pub. L. 99–514, title XV, §§ 1521(b), 1523(b)(1), title XVIII, § 1899A(46), Oct. 22, 1986, 100 Stat. 2746, 2748, 2961; Pub. L. 100–647, title I, § 1018(u)(44), Nov. 10, 1988, 102 Stat. 3592; Pub. L. 102–486, title XIX, § 1935(a), Oct. 24, 1992, 106 Stat. 3032; Pub. L. 107–16, title I, § 101(c)(10), June 7, 2001, 115 Stat. 44; Pub. L. 110–289, div. C, title III, § 3091(c), July 30, 2008, 122 Stat. 2911.)

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

AMENDMENTS

2008—Subsec. (b)(3)(F). Pub. L. 110–289 added subpar. (F).

2001—Subsec. (a)(1). Pub. L. 107–16, §§ 101(c)(10), 901, temporarily substituted ''equal to the product of the fourth lowest rate of tax applicable under section 1(c) and such payment'' for ''equal to 31 percent of such payment'' in concluding provisions. See Effective and Termination Dates of 2001 Amendment note below.

1992—Subsec. (a)(1). Pub. L. 102–486, in closing provisions, substituted ''31 percent'' for ''20 percent''.

1988—Subsec. (h)(5)(D). Pub. L. 100–647 inserted period at end of subpar. (D).

1986—Subsec. (b)(3)(E). Pub. L. 99–514, § 1523(b)(1), added subpar. (E).

Subsec. (b)(6). Pub. L. 99–514, § 1899A(46), substituted ''6041A(a)'' for ''6041(A)(a)'' in heading.

Subsec. (h)(5)(D). Pub. L. 99–514, § 1521(b), added subpar. (D).

1984—Subsec. (c)(1). Pub. L. 98–369, § 722(h)(2), substituted ''(but not the reasons for the withholding under subsection (a)(1)(C))'' for ''(but not the reasons therefor)''.

Subsec. (d)(2)(A). Pub. L. 98–369, § 722(h)(1)(A), inserted ''the payor was notified by a broker under subparagraph (B) or'' after ''if (and only if)'' in provisions preceding cl. (i), struck out cl. (i) which read as follows: ''the payor was notified by a broker under subparagraph (B),'' and redesignated cls. (ii) and (iii) as (i) and (ii), respectively.

Subsec. (d)(2)(B). Pub. L. 98–369, § 722(h)(1)(B), in amending subpar. (B) generally, reenacted cl. (i), in cl. (ii) inserted ''with respect to such acquisition—'', added subcls. (I) and (II), redesignated former subcls. (I) and (II) as (III) and (IV), respectively, and in subcl. (III) substituted ''the Secretary notifies such broker'' for ''such broker is notified by the Secretary'', and in provisions following cl. (ii) substituted ''shall within such period as the Secretary may prescribe by regulations (but not later than 15 days after such acquisition), notify the payor that such payee is subject to withholding under subparagraph (A), (B), (C) or (D) of subsection (a)(1),'' for ''within 15 days after the date of the acquisition notify the payor that such payee is subject to withholding under subsection (a)(1)(D) (or subsection (a)(1)(C) in the case of a notification described in clause (ii)(II).''

Subsec. (e)(1). Pub. L. 98–369, § 152(a), inserted provision that the Secretary may require that a TIN required to be furnished under subsection (a)(1)(A) be provided under penalties of perjury only with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title III, § 3091(e), July 30, 2008, 122 Stat. 2911, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 6050W of this title and amending this section and section 6724 of this title] shall apply to returns for calendar years beginning after December 31, 2010.

''(2) APPLICATION OF BACKUP WITHHOLDING.—

''(A) IN GENERAL.—The amendment made by subsection (c) [amending this section] shall apply to amounts paid after December 31, 2011.

''(B) ELIGIBILITY FOR TIN MATCHING PROGRAM.—Solely for purposes of carrying out any TIN matching program established by the Secretary under section 3406(i) of the Internal Revenue Code of 1986—

''(i) the amendments made this section shall be treated as taking effect on the date of the enactment of this Act [July 30, 2008], and

''(ii) each person responsible for setting the standards and mechanisms referred to in section 6050W(d)(2)(C) of such Code, as added by this section, for settling transactions involving payment cards shall be treated in the same manner as a payment settlement entity.''

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to amounts paid after the 60th day after June 7, 2001, and references to income brackets and rates of tax in such amendment to be applied without regard to section 1(i)(1)(D) of this title, see section 101(d)(2) of Pub. L. 107–16, set out as a note under section 1 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and

administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1935(b) of Pub. L. 102–486 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts paid after December 31, 1992.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1521(b) of Pub. L. 99–514 applicable to real estate transactions closing after Dec. 31, 1986, see section 1521(c) of Pub. L. 99–514, set out as a note under section 6045 of this title.

Amendment by section 1523(b)(1) of Pub. L. 99–514 applicable to payments made after Dec. 31, 1986, see section 1523(d) of Pub. L. 99–514, set out as an Effective Date note under section 6050N of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 152(b) of Pub. L. 98–369 provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984].''

Amendment by section 722(h)(1), (2) of Pub. L. 98–369 applicable as if included in amendments made by Interest and Dividend Tax Compliance Act of 1983, Pub. L. 98–67, see section 722(h)(5)(A) of Pub. L. 98–369, set out as a note under section 643 of this title.

EFFECTIVE DATE

Section applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98–67, set out as an Effective Date of 1983 Amendment note under section 31 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§§ 3451 to 3456. Repealed. Pub. L. 98–67, title I, § 102(a), Aug. 5, 1983, 97 Stat. 369]

Section 3451, Pub. L. 97–248, title III, § 301, Sept. 3, 1982, 96 Stat. 576, set forth withholding requirements respecting income tax collected at source on interest, dividends, and patronage dividends.

Section 3452, Pub. L. 97–248, title III, § 301, Sept. 3, 1982, 96 Stat. 577, related to exemptions from withholding requirements.

Section 3453, Pub. L. 97–248, title III, § 301, Sept. 3, 1982, 96 Stat. 579; Pub. L. 97–354, § 3(i)(1), Oct. 19, 1982, 96 Stat. 1690, defined ''payor''.

Section 3454, Pub. L. 97–248, title III, § 301, Sept. 3, 1982, 96 Stat. 580; Pub. L. 97–354, § 3(i)(2), (3), Oct. 19, 1982, 96 Stat. 1690; Pub. L. 97–424, title V, § 547(b)(3), Jan. 6, 1983, 96 Stat. 2200, defined the terms ''interest'', ''dividend'', and ''patronage dividend''.

Section 3455, Pub. L. 97–248, title III, § 301, Sept. 3, 1982, 96 Stat. 583, set forth definitions and other special rules.

Section 3456, Pub. L. 97–248, title III, § 301, Sept. 3, 1982, 96 Stat. 585, set forth administrative provisions.

EFFECTIVE DATES; SPECIAL RULES

Pub. L. 97–248, title III, § 308, Sept. 3, 1982, 96 Stat. 591, which provided that the amendments made by sections 301 to 308 [enacting subchapter B (§§ 3451–3456) of chapter 24 of this title and amending sections 31, 274, 275, 643, 661, 3403, 3502, 3507, 6013, 6015, 6042, 6044, 6049, 6051, 6365, 6401, 6413, 6654, 6682, 7205, 7215, 7654, and 7701 of this title] would apply to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, provided for the delay in applications for payors unable to comply with the requirements of such provisions without undue hardship, provided a temporary rule for certain withholding exemptions, and provided for delays in making deposits, was repealed by Pub. L. 98–67, title I, § 102(a), Aug. 5, 1983, 97 Stat. 369.

REPEAL OF WITHHOLDING ON INTEREST AND DIVIDENDS

Pub. L. 98–67, title I, § 102(a)–(d), Aug. 5, 1983, 97 Stat. 369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—Subtitle A of title III of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to withholding of tax from interest and dividends) [subtitle A (§§ 301–308) of title III of Pub. L. 97–248, which enacted this section and sections 3452 to 3456 of this title, amended sections 31, 274, 275, 643, 661, 3403, 3502, 3507, 6013, 6015, 6042, 6044, 6051, 6365, 6401, 6413, 6654, 6682, 7205, 7215, 7654, and 7701 of this title and enacted provisions set out as a note above] is hereby repealed as of the close of June 30, 1983.

''(b) CONFORMING AMENDMENT.—Except as provided in this section, the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied and administered as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

''(c) REPEAL NOT TO APPLY TO AMOUNTS DEDUCTED AND WITHHELD BEFORE SEPTEMBER 2, 1983.—

''(1) IN GENERAL.—If, notwithstanding the repeal made by subsection (a) (and the provisions of subsection (b)), an amount is deducted and withheld before September 2, 1983, under subchapter B of chapter 24 of the Internal Revenue Code of 1986 (as in effect before its repeal by subsection (a)), the repeal made by subsection (a) (and the provisions of subsection (b)) shall not apply to the amount so deducted and withheld.

''(2) ELECTION TO HAVE PARAGRAPH (1) NOT APPLY.—Paragraph (1) shall not apply with respect to any payor who elects (at the time and in the manner prescribed by the Secretary of the Treasury or his delegate) to have paragraph (1) not apply.

''(d) ESTIMATED TAX PAYMENTS.—For purposes of determining the amount of any addition to tax under section 6654 of the Internal Revenue Code of 1986 with respect to any installment required to be paid before July 1, 1983, the amount of the credit allowed by section 31 of such Code for any taxable year which includes any portion of the period beginning July 1, 1983, and ending December 31, 1983, shall be increased by an amount equal to 10 percent of the aggregate amount of payments—

''(1) which are received during the portion of such taxable year after June 30, 1983, and before January 1, 1984, and

''(2) which (but for the repeal made by subsection (a)) would have been subject to withholding under subchapter B of chapter 24 of such Code (determined without regard to any exemption described in section 3452 of such subchapter B).''

CHAPTER 25—GENERAL PROVISIONS RELATING TO EMPLOYMENT TAXES

Sec.
3501. Collection and payment of taxes.
3502. Nondeductibility of taxes in computing taxable income.
3503. Erroneous payments.
3504. Acts to be performed by agents.

Sec.
3505. Liability of third parties paying or providing for wages.
3506. Individuals providing companion sitting placement services.
[3507. Repealed.]
3508. Treatment of real estate agents and direct sellers.
3509. Determination of employer's liability for certain employment taxes.
3510. Coordination of collection of domestic service employment taxes with collection of income taxes.

AMENDMENTS

2010—Pub. L. 111–226, title II, § 219(b)(3), Aug. 10, 2010, 124 Stat. 2403, struck out item 3507 ''Advance payment of earned income credit''.

1994—Pub. L. 103–387, § 2(b)(2), Oct. 22, 1994, 108 Stat. 4074, added item 3510.

1990—Pub. L. 101–508, title XI, § 11801(b)(16), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 3510 ''Credit for increased social security employee taxes and railroad retirement tier 1 employee taxes imposed during 1984''.

1983—Pub. L. 98–67 repealed amendments made by section 307 of Pub. L. 97–248. See 1982 Amendment note below.

Pub. L. 98–21, title I, § 123(b)(2), Apr. 20, 1983, 97 Stat. 88, added item 3510.

1982—Pub. L. 97–248, title II, §§ 269(d), 270(b), Sept. 3, 1982, 96 Stat. 553, 554, added items 3508 and 3509.

Pub. L. 97–248, title III, §§ 307(b)(5), 308(a), Sept. 3, 1982, 96 Stat. 591, provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, the caption of chapter 25 is amended by inserting ''AND COLLECTION OF INCOME TAXES AT SOURCE''. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§ 301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1978—Pub. L. 95–600, title I, § 105(b)(2), Nov. 6, 1978, 92 Stat. 2776, added item 3507.

1977—Pub. L. 95–171, § 10(b), Nov. 12, 1977, 91 Stat. 1356, added item 3506.

1966—Pub. L. 89–719, title I, § 105(c), Nov. 2, 1966, 80 Stat. 1139, added item 3505.

§ 3501. Collection and payment of taxes

(a) General rule

The taxes imposed by this subtitle shall be collected by the Secretary and shall be paid into the Treasury of the United States as internal-revenue collections.

(b) Taxes with respect to non-cash fringe benefits

The taxes imposed by this subtitle with respect to non-cash fringe benefits shall be collected (or paid) by the employer at the time and in the manner prescribed by the Secretary by regulations.

(Aug. 16, 1954, ch. 736, 68A Stat. 471; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title V, § 531(d)(5), July 18, 1984, 98 Stat. 885.)

AMENDMENTS

1984—Pub. L. 98–369 designated existing provisions as subsec. (a), added heading, and added subsec. (b).

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of this title.

§ 3502. Nondeductibility of taxes in computing taxable income

(a) The taxes imposed by section 3101 of chapter 21, and by sections 3201 and 3211 of chapter 22 shall not be allowed as a deduction to the taxpayer in computing taxable income under subtitle A.

(b) The tax deducted and withheld under chapter 24 shall not be allowed as a deduction either to the employer or to the recipient of the income in computing taxable income under subtitle A.

(Aug. 16, 1954, ch. 736, 68A Stat. 471; Pub. L. 97–248, title III, §§ 305(b), 308(a), Sept. 3, 1982, 96 Stat. 588, 591; Pub. L. 98–67, title I, § 102(a), Aug. 5, 1983, 97 Stat. 369.)

AMENDMENTS

1983—Subsecs. (b), (c). Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Subsecs. (b), (c). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, subsec. (b) is amended and a new subsec. (c) is added. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§ 301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

§ 3503. Erroneous payments

Any tax paid under chapter 21 or 22 by a taxpayer with respect to any period with respect to which he is not liable to tax under such chapter shall be credited against the tax, if any, imposed by such other chapter upon the taxpayer, and the balance, if any, shall be refunded.

(Aug. 16, 1954, ch. 736, 68A Stat. 471.)

§ 3504. Acts to be performed by agents

In case a fiduciary, agent, or other person has the control, receipt, custody, or disposal of, or pays the wages of an employee or group of employees, employed by one or more employers, the Secretary, under regulations prescribed by him, is authorized to designate such fiduciary, agent, or other person to perform such acts as are required of employers under this title and as the Secretary may specify. Except as may be otherwise prescribed by the Secretary, all provisions of law (including penalties) applicable in respect of an employer shall be applicable to a fiduciary, agent, or other person so designated but, except as so provided, the employer for whom such fiduciary, agent, or other person acts shall remain subject to the provisions of law (including penalties) applicable in respect of employers.

(Aug. 16, 1954, ch. 736, 68A Stat. 471; Pub. L. 85–866, title I, § 71, Sept. 2, 1958, 72 Stat. 1660; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' in three places.

1958—Pub. L. 85–866 substituted ''title'' for ''subtitle'' in first sentence.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 71 of Pub. L. 85–866 provided that the amendment made by that section is effective with respect to remuneration paid after Dec. 31, 1954.

§ 3505. Liability of third parties paying or providing for wages

(a) Direct payment by third parties

For purposes of sections 3102, 3202, 3402, and 3403, if a lender, surety, or other person, who is not an employer under such sections with respect to an employee or group of employees, pays wages directly to such an employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by such employer.

(b) Personal liability where funds are supplied

If a lender, surety, or other person supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of such employer, with actual notice or knowledge (within the meaning of section 6323(i)(1)) that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this subtitle to be deducted and withheld by such employer from such wages, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) which are not paid over to the United States by such employer with respect to such wages. However, the liability of such lender, surety, or other person shall be limited to an amount equal to 25 percent of the amount so supplied to or for the account of such employer for such purpose.

(c) Effect of payment

Any amounts paid to the United States pursuant to this section shall be credited against the liability of the employer.

(Added Pub. L. 89–719, title I, § 105(a), Nov. 2, 1966, 80 Stat. 1138.)

EFFECTIVE DATE

Section applicable only with respect to wages paid on or after Jan. 1, 1967, see section 114(c)(1) of Pub. L. 89–719, set out as an Effective Date of 1966 Amendment note under section 6323 of this title.

§ 3506. Individuals providing companion sitting placement services

(a) In general

For purposes of this subtitle, a person engaged in the trade or business of putting sitters in touch with individuals who wish to employ them shall not be treated as the employer of such sitters (and such sitters shall not be treated as employees of such person) if such person does not pay or receive the salary or wages of the sitters and is compensated by the sitters or the persons who employ them on a fee basis.

(b) Definition

For purposes of this section, the term ''sitters'' means individuals who furnish personal attendance, companionship, or household care services to children or to individuals who are elderly or disabled.

(c) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purpose of this section.

(Added Pub. L. 95–171, § 10(a), Nov. 12, 1977, 91 Stat. 1356.)

EFFECTIVE DATE

Section 10(c) of Pub. L. 95–171 provided that: ''The amendments made by this section [enacting this section] shall apply to remuneration received after December 31, 1974.''

UNEMPLOYMENT COMPENSATION OR SOCIAL SECURITY BENEFITS BASED ON SERVICES PERFORMED BEFORE NOVEMBER 12, 1977, UNAFFECTED

Section 10(d) of Pub. L. 95–171 provided that: ''The amendments made by this section [enacting this section] shall not be construed as affecting (1) any individual's right to receive unemployment compensation based on services performed before the date of the enactment of this Act [Nov. 12, 1977], or (2) any individual's eligibility for social security benefits to the extent based on services performed before that date.''

[§ 3507. Repealed. Pub. L. 111–226, title II, § 219(a)(1), Aug. 10, 2010, 124 Stat. 2403]

Section, added Pub. L. 95–600, title I, § 105(b)(1), Nov. 6, 1978, 92 Stat. 2773; amended Pub. L. 97–248, title III, §§ 307(a)(3), 308(a), Sept. 3, 1982, 96 Stat. 589, 591; Pub. L. 98–67, title I, § 102(a), Aug. 5, 1983, 97 Stat. 369; Pub. L. 98–369, div. A, title IV, § 474(r)(30), title X, § 1042(d)(3), (4), July 18, 1984, 98 Stat. 845, 1044; Pub. L. 99–514, title I, § 111(d)(2), (3), Oct. 22, 1986, 100 Stat. 2108; Pub. L. 101–508, title XI, § 11111(c), Nov. 5, 1990, 104 Stat. 1388–412; Pub. L. 103–66, title XIII, § 13131(d)(4)–(6), Aug. 10, 1993, 107 Stat. 435; Pub. L. 103–465, title VII, § 721(c), Dec. 8, 1994, 108 Stat. 5002, related to advance payment of earned income credit.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 2010, see section 219(c) of Pub. L. 111–226, set out as an Effective Date of 2010 Amendment note under section 32 of this title.

§ 3508. Treatment of real estate agents and direct sellers

(a) General rule

For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller—

(1) the individual performing such services shall not be treated as an employee, and

(2) the person for whom such services are performed shall not be treated as an employer.

(b) Definitions

For purposes of this section—

(1) Qualified real estate agent

The term ''qualified real estate agent'' means any individual who is a sales person if—

(A) such individual is a licensed real estate agent,

(B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes.

(2) Direct seller

The term ''direct seller'' means any person if—

(A) such person—

(i) is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment,

(ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment, or

(iii) is engaged in the trade or business of the delivering or distribution of newspapers or shopping news (including any services directly related to such trade or business),

(B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for Federal tax purposes.

(3) Coordination with retirement plans for self-employed

This section shall not apply for purposes of subtitle A to the extent that the individual is treated as an employee under section 401(c)(1) (relating to self-employed individuals).

(Added Pub. L. 97–248, title II, § 269(a), Sept. 3, 1982, 96 Stat. 551; amended Pub. L. 104–188, title I, § 1118(a), Aug. 20, 1996, 110 Stat. 1764.)

AMENDMENTS

1996—Subsec. (b)(2)(A). Pub. L. 104–188 added cl. (iii).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1118(b) of Pub. L. 104–188 provided that: ''The amendments made by this section shall apply to services performed after December 31, 1995.''

EFFECTIVE DATE

Section 269(e) of Pub. L. 97–248 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 410 of Title 42, The Public Health and Welfare] shall apply to services performed after December 31, 1982.

''(2) SUBSECTION (c).—The amendments made by subsection (c) [amending provisions set out as a note under section 3401 of this title] shall take effect on July 1, 1982.''

RULES AND REGULATIONS

Section 269(c)(3) of Pub. L. 97–248 provided that: ''Nothing in section 530 of the Revenue Act of 1978 [set out as a note under section 3401 of this title] shall be construed to prohibit the implementation of the amendments made by this section [enacting this section, amending section 410 of Title 42, The Public Health and Welfare, and amending provisions set out as a note under section 3401 of this title].''

§ 3509. Determination of employer's liability for certain employment taxes

(a) In general

If any employer fails to deduct and withhold any tax under chapter 24 or subchapter A of chapter 21 with respect to any employee by reason of treating such employee as not being an employee for purposes of such chapter or subchapter, the amount of the employer's liability for—

(1) Withholding taxes

Tax under chapter 24 for such year with respect to such employee shall be determined as if the amount required to be deducted and withheld were equal to 1.5 percent of the wages (as defined in section 3401) paid to such employee.

(2) Employee social security tax

Taxes under subchapter A of chapter 21 with respect to such employee shall be determined as if the taxes imposed under such subchapter were 20 percent of the amount imposed under such subchapter without regard to this subparagraph.

(b) Employer's liability increased where employer disregards reporting requirements

(1) In general

In the case of an employer who fails to meet the applicable requirements of section 6041(a), 6041A, or 6051 with respect to any employee, unless such failure is due to reasonable cause and not willful neglect, subsection (a) shall be applied with respect to such employee—

(A) by substituting ''3 percent'' for ''1.5 percent'' in paragraph (1); and

(B) by substituting ''40 percent'' for ''20 percent'' in paragraph (2).

(2) Applicable requirements

For purposes of paragraph (1), the term ''applicable requirements'' means the requirements described in paragraph (1) which would be applicable consistent with the employer's treatment of the employee as not being an employee for purposes of chapter 24 or subchapter A of chapter 21.

(c) Section not to apply in cases of intentional disregard

This section shall not apply to the determination of the employer's liability for tax under

chapter 24 or subchapter A of chapter 21 if such liability is due to the employer's intentional disregard of the requirement to deduct and withhold such tax.

(d) Special rules

For purposes of this section—

(1) Determination of liability

If the amount of any liability for tax is determined under this section—

(A) the employee's liability for tax shall not be affected by the assessment or collection of the tax so determined,

(B) the employer shall not be entitled to recover from the employee any tax so determined, and

(C) sections[1] 3402(d) and section 6521 shall not apply.

(2) Section not to apply where employer deducts wage but not social security taxes

This section shall not apply to any employer with respect to any wages if—

(A) the employer deducted and withheld any amount of the tax imposed by chapter 24 on such wages, but

(B) failed to deduct and withhold the amount of the tax imposed by subchapter A of chapter 21 with respect to such wages.

(3) Section not to apply to certain statutory employees

This section shall not apply to any tax under subchapter A of chapter 21 with respect to an individual described in subsection (d)(3) of section 3121 (without regard to whether such individual is described in paragraph (1) or (2) of such subsection).

(Added Pub. L. 97–248, title II, § 270(a), Sept. 3, 1982, 96 Stat. 553; amended Pub. L. 100–647, title II, § 2003(d), Nov. 10, 1988, 102 Stat. 3598; Pub. L. 101–508, title V, § 5130(a)(4), Nov. 5, 1990, 104 Stat. 1388–289.)

AMENDMENTS

1990—Subsec. (d)(3). Pub. L. 101–508 substituted ''subsection (d)(3)'' for ''subsection (d)(4)''.

1988—Subsec. (d)(3). Pub. L. 100–647 substituted ''subsection (d)(4)'' for ''subsection (d)(3)''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the enactment of Pub. L. 100–647, § 2003(d), see section 5130(b) of Pub. L. 101–508, set out as a note under section 1402 of this title.

EFFECTIVE DATE

Section 270(c) of Pub. L. 97–248 provided that: ''The amendment made by this section [enacting this section] shall take effect on the date of the enactment of this Act [Sept. 3, 1982], except that such amendments shall not apply to any assessment made before January 1, 1983.''

§ 3510. Coordination of collection of domestic service employment taxes with collection of income taxes

(a) General rule

Except as otherwise provided in this section—

(1) returns with respect to domestic service employment taxes shall be made on a calendar year basis,

(2) any such return for any calendar year shall be filed on or before the 15th day of the fourth month following the close of the employer's taxable year which begins in such calendar year, and

(3) no requirement to make deposits (or to pay installments under section 6157) shall apply with respect to such taxes.

(b) Domestic service employment taxes subject to estimated tax provisions

(1) In general

Solely for purposes of section 6654, domestic service employment taxes imposed with respect to any calendar year shall be treated as a tax imposed by chapter 2 for the taxable year of the employer which begins in such calendar year.

(2) Employers not otherwise required to make estimated payments

Paragraph (1) shall not apply to any employer for any calendar year if—

(A) no credit for wage withholding is allowed under section 31 to such employer for the taxable year of the employer which begins in such calendar year, and

(B) no addition to tax would (but for this section) be imposed under section 6654 for such taxable year by reason of section 6654(e).

(3) Annualization

Under regulations prescribed by the Secretary, appropriate adjustments shall be made in the application of section 6654(d)(2) in respect of the amount treated as tax under paragraph (1).

(4) Transitional rule

In the case of any taxable year beginning before January 1, 1998, no addition to tax shall be made under section 6654 with respect to any underpayment to the extent such underpayment was created or increased by this section.

(c) Domestic service employment taxes

For purposes of this section, the term ''domestic service employment taxes'' means—

(1) any taxes imposed by chapter 21 or 23 on remuneration paid for domestic service in a private home of the employer, and

(2) any amount withheld from such remuneration pursuant to an agreement under section 3402(p).

For purposes of this subsection, the term ''domestic service in a private home of the employer'' includes domestic service described in section 3121(g)(5).

(d) Exception where employer liable for other employment taxes

To the extent provided in regulations prescribed by the Secretary, this section shall not apply to any employer for any calendar year if such employer is liable for any tax under this subtitle with respect to remuneration for services other than domestic service in a private home of the employer.

(e) General regulatory authority

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out

[1] So in original. Probably should be ''section''.

the purposes of this section. Such regulations may treat domestic service employment taxes as taxes imposed by chapter 1 for purposes of coordinating the assessment and collection of such employment taxes with the assessment and collection of domestic employers' income taxes.

(f) Authority to enter into agreements to collect State unemployment taxes

(1) In general

The Secretary is hereby authorized to enter into an agreement with any State to collect, as the agent of such State, such State's unemployment taxes imposed on remuneration paid for domestic service in a private home of the employer. Any taxes to be collected by the Secretary pursuant to such an agreement shall be treated as domestic service employment taxes for purposes of this section.

(2) Transfers to State account

Any amount collected under an agreement referred to in paragraph (1) shall be transferred by the Secretary to the account of the State in the Unemployment Trust Fund.

(3) Subtitle F made applicable

For purposes of subtitle F, any amount required to be collected under an agreement under paragraph (1) shall be treated as a tax imposed by chapter 23.

(4) State

For purposes of this subsection, the term ''State'' has the meaning given such term by section 3306(j)(1).

(Added Pub. L. 103–387, § 2(b)(1), Oct. 22, 1994, 108 Stat. 4073.)

PRIOR PROVISIONS

A prior section 3510, added Pub. L. 98–21, title I, § 123(b)(1), Apr. 20, 1983, 97 Stat. 88, provided a credit for increased social security employee taxes and railroad retirement tier 1 employee taxes imposed during 1984, prior to repeal by Pub. L. 101–508, title XI, § 11801(a)(42), Nov. 5, 1990, 104 Stat. 1388–521.

EFFECTIVE DATE

Section 2(b)(3) of Pub. L. 103–387 provided that: ''The amendments made by this subsection [enacting this section] shall apply to remuneration paid in calendar years beginning after December 31, 1994.''

EXPANDED INFORMATION TO EMPLOYERS

Section 2(b)(4) of Pub. L. 103–387 provided that: ''The Secretary of the Treasury or the Secretary's delegate shall prepare and make available information on the Federal tax obligations of employers with respect to employees performing domestic service in a private home of the employer. Such information shall also include a statement that such employers may have obligations with respect to such employees under State laws relating to unemployment insurance and workers compensation.''

Subtitle D—Miscellaneous Excise Taxes

Chapter		Sec.[1]
31.	Retail excise taxes	4001
32.	Manufacturers excise taxes	4061
33.	Facilities and services	4231
34.	Taxes on certain insurance policies	4371
35.	Taxes on wagering	4401
36.	Certain other excise taxes	4451
[37.	Repealed.]	
38.	Environmental taxes	4611
39.	Registration-required obligations	4701
40.	General provisions relating to occupational taxes	4901
41.	Public charities	4911
42.	Private foundations; and certain other tax-exempt organizations	4940
43.	Qualified pension, etc., plans	4971
44.	Real estate investment trusts	4981
45.	Provisions relating to expatriated entities	4985
46.	Golden parachute payments	4999
47.	Certain group health plans	5000
48.	Maintenance of minimum essential coverage	5000A
49.	Cosmetic services	5000B
50.	Foreign procurement	5000C

[1] Section numbers editorially supplied.

AMENDMENTS

2011—Pub. L. 111–347, title III, § 301(a)(2), Jan. 2, 2011, 124 Stat. 3666, added item for chapter 50.

2010—Pub. L. 111–148, title X, § 10907(c), Mar. 23, 2010, 124 Stat. 1020, added item for chapter 49.

Pub. L. 111–148, title IX, § 9017(b), Mar. 23, 2010, 124 Stat. 872, which directed amendment of analysis by adding item for chapter 49, was not executed in view of Pub. L. 111–148, title X, § 10907(a), Mar. 23, 2010, 124 Stat. 1020, which provided that the amendments made by section 9017 of Pub. L. 111–148 were deemed null, void, and of no effect.

Pub. L. 111–148, title I, § 1501(c), title VI, § 6301(e)(2)(B)(ii), Mar. 23, 2010, 124 Stat. 249, 747, added items for chapters 34 and 48 and struck out former item for chapter 34 ''Documentary stamp taxes''.

2004—Pub. L. 108–357, title VIII, § 802(c)(2), Oct. 22, 2004, 118 Stat. 1568, added item for chapter 45.

1990—Pub. L. 101–508, title XI, § 11801(b)(17), Nov. 5, 1990, 104 Stat. 1388–522, struck out item for chapter 37 ''Sugar, coconut and palm oil''.

1989—Pub. L. 101–239, title VI, § 6202(b)(4)(B), title VII, § 7841(d)(4), Dec. 19, 1989, 103 Stat. 2233, 2428, substituted semicolon for comma in item for chapter 42 and struck out ''large'' after ''Certain'' in item for chapter 47.

1988—Pub. L. 100–418, title I, § 1941(b)(3)(A), Aug. 23, 1988, 102 Stat. 1324, struck out item for chapter 45 ''Windfall profit tax on domestic crude oil''.

1987—Pub. L. 100–203, title X, § 10712(c)(8), Dec. 22, 1987, 101 Stat. 1330–467, substituted ''and certain other tax-exempt organizations'' for ''black lung benefit trusts'' in item for chapter 42.

1986—Pub. L. 99–509, title IX, § 9319(d)(2), Oct. 21, 1986, 100 Stat. 2012, added item for chapter 47.

1984—Pub. L. 98–369, div. A, title I, § 67(d)(2), July 18, 1984, 98 Stat. 587, added item for chapter 46.

1983—Pub. L. 97–424, title V, § 512(b)(2)(B), Jan. 6, 1983, 96 Stat. 2177, substituted ''Retail excise taxes'' for ''Special fuels'' in item for chapter 31.

1982—Pub. L. 97–248, title III, § 310(b)(4)(B), Sept. 3, 1982, 96 Stat. 598, added item for chapter 39.

1980—Pub. L. 96–510, title II, § 211(b), Dec. 11, 1980, 94 Stat. 2801, added item for chapter 38.

Pub. L. 96–223, § 101(a)(2), Apr. 2, 1980, 94 Stat. 250, added item for chapter 45.

1978—Pub. L. 95–227, § 4(c)(2)(C), Feb. 10, 1978, 92 Stat. 22, inserted '', black lung benefit trusts'' after ''foundations'' in item for chapter 42.

1976—Pub. L. 94–455, title XIII, § 1307(d)(3)(A), title XVI, § 1605(c), title XIX, §§ 1904(b)(7)(E), (10)(G), 1952(n)(6), Oct. 4, 1976, 90 Stat. 1728, 1755, 1815, 1818, 1846, substituted ''41. Public charities'' for ''41. Interest equalization tax'' added item for chapter 44 and struck out items for chapters ''38. Import taxes'' and ''39. Regulatory taxes''.

1974—Pub. L. 93–406, title II, § 1016(b)(2), Sept. 2, 1974, 88 Stat. 932, added item for chapter 43.

1969—Pub. L. 91–172, title I, § 101(j)(59), Dec. 30, 1969, 83 Stat. 532, added item for chapter 42.