

section or section 3121(a) of Title 26, Internal Revenue Code, see section 4 of Pub. L. 98-118, set out as a note under section 3121 of Title 26.

**PAYMENTS UNDER STATE TEMPORARY DISABILITY LAW
TO BE TREATED AS REMUNERATION FOR SERVICE**

For purposes of applying this section with respect to the parenthetical matter contained in subsec. (b)(2) 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 Title 26, Internal Revenue Code.

SERVICES FOR COOPERATIVES PRIOR TO 1951

Section 110 of act Aug. 28, 1950, provided that: "In any case in which—

"(1) an individual has been employed at any time prior to 1951 by organizations enumerated in the first sentence of section 101(12) of the Internal Revenue Code [1939].

"(2) the service performed by such individual during the time he was so employed constituted agricultural labor as defined in section 209(l) of the Social Security Act [former subsec. (l) of this section] and section 1426(h) of the Internal Revenue Code [1939], as in effect prior to the enactment of this Act [Aug. 28, 1950], and such service would, but for the provisions of such sections, have constituted employment for the purposes of title II of the Social Security Act [this subchapter] and subchapter A of chapter 9 of such Code [1939].

"(3) the taxes imposed by sections 1400 and 1410 of the Internal Revenue Code [1939] have been paid with respect to any part of the remuneration paid to such individual by such organization for such service and the payment of such taxes by such organization has been made in good faith upon the assumption that such service did not constitute agricultural labor as so defined, and

"(4) no refund of such taxes has been obtained, the amount of such remuneration with respect to which such taxes have been paid shall be deemed to constitute remuneration for employment as defined in section 209(b) of the Social Security Act [former subsec. (b) of this section] as in effect prior to the enactment of this Act [Aug. 28, 1950] (but it shall not constitute wages for purposes of deductions under section 203 of such Act [section 403 of this title] for months for which benefits under title II of such Act [this subchapter] have been certified and paid prior to the enactment of this act."

REFUNDS OR CREDITS FOR OVERPAYMENTS

Section 3 of act Apr. 20, 1948, provided that: "If any amount paid prior to the date of the enactment of this Act [Apr. 20, 1948] constitutes an overpayment of tax solely by reason of an amendment made by this Act [amending this section], no refund or credit shall be made or allowed with respect to the amount of such overpayment."

§ 410. Definitions relating to employment

For the purposes of this subchapter—

(a) Employment

The term "employment" means any service performed after 1936 and prior to 1951 which was employment for the purposes of this subchapter under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950 (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 em-

ployee 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 (i) of an American employer (as defined in subsection (e) of this section), or (ii) of a foreign affiliate (as defined in section 3121(l)(6) of the Internal Revenue Code of 1986) of an American employer during any period for which there is in effect an agreement, entered into pursuant to section 3121(l) of such Code, with respect to such affiliate, 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 433 of this title; except that, in the case of service performed after 1950, 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 subchapter 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 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 of Taiwan as provided under section 3310 of title 22, then the service performed for that Institute shall be considered 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, 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 450i(e)(2) of title 25 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 services);

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,

(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, 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 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 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, (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 correspond-

ing 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 2157 of title 50, or the Federal Employees' Retirement System Open Enrollment Act of 1997¹ to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5, 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 [22 U.S.C. 4071i], to become subject to the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of such Act [22 U.S.C. 4071 et seq.];

(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 (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 included under an agreement under section 418 of this title,

(B) service which, under subsection (k) of this section, constitutes covered transportation service,

(C) 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 subchapter—

(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 officer or 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,

(D) 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); 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 (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,

(E) 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 (C) shall apply, 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;

¹ So in original. Probably should be followed by a comma.

(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 418(c)(8)(B) of this title 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 411(c)(2)(E) of this title 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 of the Treasury, the term "retirement system" has the meaning given such term by section 418(b)(4) of this title;

(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 section 3121(r) of the Internal Revenue Code of 1986 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 section 3121(w) of the Internal Revenue Code of 1986, other than service in an unrelated trade or business (within the meaning of section 513(a) of such Code);

(9) Service performed by an individual as an employee or employee representative as defined in section 3231 of the Internal Revenue Code of 1986;

(10) Service performed in the employ of—

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

(B) an organization described in section 509(a)(3) of the Internal Revenue Code of 1986 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 in its employ performed by a student referred to in section 418(c)(5) of this title are covered under the agreement between the Commissioner of Social Security

and such State entered into pursuant to section 418 of this title;

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 non-diplomatic 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 eighteen 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 entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669) [22 U.S.C. 288 et seq.], except service which constitutes "employment" under subsection (r) of this section;

(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 fur-bearing 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 [50 U.S.C. 781 et seq.], 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 non-immigrant alien admitted to Guam pursuant to section 1101(a)(15)(H)(ii) of title 8;

(19) Service which is performed by a non-resident 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 1101(a)(15) of title 8, 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 additional compensation 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 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.

(b) Included and excluded service

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 thirty-one 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 paragraph (9) of subsection (a) of this section.

(c) American vessel

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.

(d) American aircraft

The term "American aircraft" means an aircraft registered under the laws of the United States.

(e) American employer

(1) The term "American employer" means an employer which is (A) the United States or any instrumentality thereof, (B) a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing, (C) an individual who is a resident of the United States, (D) a partnership, if two-thirds or more of the partners are residents of the United States, (E) a trust, if all of the trustees are residents of the United States, or (F) a corporation organized under the laws of the United States or of any State.

(2)(A) 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 as an American employer with respect to such services performed by such employee.

(B) For purposes of this paragraph—

(i) The term "domestically controlled group of entities" means a controlled group of entities the common parent of which is a domestic corporation.

(ii) The term "controlled group of entities" means a controlled group of corporations as defined in section 1563(a)(1) of the Internal Revenue Code of 1986, 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 of such Code.

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) of such Code) by members of such group (including any entity treated as a member of such group by reason of this sentence).

(C) Subparagraph (A) shall not apply to any services to which paragraph (1) of section 3121(z) of the Internal Revenue Code of 1986 does not apply by reason of paragraph (4) of such section.

(f) Agricultural labor

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 1141j(g)² of title 12, 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) of this paragraph, but only if such operators produced all of the commodity with respect to which such service is performed. For the 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 twenty at any time during the calendar year in which such service is performed.

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

The provisions of subparagraphs (A) and (B) of paragraph (4) of this subsection 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.

(g) Farm

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) State

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

(i) United States

The term “United States” when used in a geographical sense means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(j) Employee

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) of this subsection) 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 trans-

² See References in Text note below.

action not part of a continuing relationship with the person for whom the services are performed.

(k) Covered transportation service

(1) Except as provided in paragraph (2) of this subsection, 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) 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 is, 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 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) of this paragraph.

(3) 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) For the 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 subchapter, 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.

(l) Service in uniformed services

(1) Except as provided in paragraph (4), the term “employment” shall, notwithstanding the provisions of subsection (a) of this section, include—

(A) service performed after December 1956 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 after December 1987 by an individual as a member of a uniformed service on inactive duty training.

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

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

(4)(A) Paragraph (1) of this subsection shall not apply in the case of any service, performed by an individual as a member of a uniformed service, which is creditable under section 231b(i) of title 45. The Railroad Retirement Board shall notify the Commissioner of Social Security,³ with respect to all such service which is so creditable.

(B) In any case where benefits under this subchapter are already payable on the basis of such individual’s wages and self-employment income at the time such notification (with respect to such individual) is received by the Commissioner of Social Security, the Commissioner of Social Security shall certify no further benefits for payment under this subchapter on the basis of such individual’s wages and self-employment income, or shall recompute the amount of any further benefits payable on the basis of such wages and self-employment income, as may be required as a consequence of subparagraph (A) of

³ So in original. The comma probably should not appear.

this paragraph. No payment of a benefit to any person on the basis of such individual's wages and self-employment income, certified by the Commissioner of Social Security prior to the end of the month in which the Commissioner receives such notification from the Railroad Retirement Board, shall be deemed by reason of this subparagraph to have been an erroneous payment or a payment to which such person was not entitled. The Commissioner of Social Security shall, as soon as possible after the receipt of such notification from the Railroad Retirement Board, advise such Board whether or not any such benefit will be reduced or terminated by reason of subparagraph (A) of this paragraph, and if any such benefit will be so reduced or terminated, specify the first month with respect to which such reduction or termination will be effective.

(m) Member of a uniformed service

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), 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 [50 U.S.C. App. 451 et seq.], 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.

(n) Crew leader

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. A crew leader shall, with respect to services 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.

(o) Peace Corps volunteer service

The term "employment" shall, notwithstanding the provisions of subsection (a) of this section, include service performed by an individual as a volunteer or volunteer leader within the meaning of the Peace Corps Act [22 U.S.C. 2501 et seq.].

(p) Medicare qualified government employment

(1) For purposes of sections 426 and 426-1 of this title, the term "medicare qualified government employment" means any service which would constitute "employment" as defined in subsection (a) of this section but for the application of the provisions of—

(A) subsection (a)(5) of this section, or

(B) subsection (a)(7) of this section, except as provided in paragraphs (2) and (3).

(2) Service shall not be treated as employment by reason of paragraph (1)(B) if the service is performed—

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

(B) 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,

(C) 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,

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

(E) 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 418(c)(8)(B) of this title for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year.

As used in this paragraph, the terms "State" and "political subdivision" have the meanings given those terms in section 418(b) of this title.

(3) Service performed for an employer shall not be treated as employment by reason of paragraph (1)(B) if—

(A) such service would be excluded from the term "employment" for purposes of this section if paragraph (1)(B) did not apply;

(B) 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

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

(4) For purposes of paragraph (3), under regulations (consistent with regulations established under section 3121(u)(2)(D) of the Internal Revenue Code of 1986)—

(A) all agencies and instrumentalities of a State (as defined in section 418(b) of this title) or of the District of Columbia shall be treated as a single employer, and

(B) 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 subparagraph (A).

(q) Treatment of real estate agents and direct sellers

Notwithstanding any other provision of this subchapter, the rules of section 3508 of the Internal Revenue Code of 1986 shall apply for purposes of this subchapter.

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

(1) For purposes of this subchapter, 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 shall constitute “employment” if—

(A) immediately before such transfer, such individual performed service with a Federal agency which constituted “employment” as defined in subsection (a) of this section, 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) For purposes of this subsection:

(A) The term “Federal agency” means an agency, as defined in section 3581(1) of title 5.

(B) The term “international organization” has the meaning provided such term by section 3581(3) of title 5.

(Aug. 14, 1935, ch. 531, title II, §210, as added Aug. 10, 1946, ch. 951, title II, §201, 60 Stat. 979; amended, Aug. 28, 1950, ch. 809, title I, §104(a), 64 Stat. 492, 494; Oct. 31, 1949, ch. 792, title V, §506(a), formerly §505(a), as added July 12, 1951, ch. 223, 65 Stat. 120, and renumbered Pub. L. 87-345, §3, Oct. 3, 1961, 75 Stat. 761; Sept. 1, 1954, ch. 1206, title I, §101(a)(4), (5), (b), (c)(1), (2), (e), (f), (m), 68 Stat. 1052, 1061; Aug. 1, 1956, ch. 836, title I, §§104(a), (b), (c)(1), 105(b), 121(c), 70 Stat. 824, 828, 839; Aug. 1, 1956, ch. 837, title IV, §402(a), 70 Stat. 870; Pub.

L. 85-840, title III, §311(a), 312(a), Aug. 28, 1958, 72 Stat. 1035; Pub. L. 86-70, §32(c)(2), June 25, 1959, 73 Stat. 149; Pub. L. 86-168, title I, §104(h), title II, §202(a), Aug. 18, 1959, 73 Stat. 387, 389; Pub. L. 86-624, §30(c)(2), July 12, 1960, 74 Stat. 420; Pub. L. 86-778, title I, §§103(c)-(f), (j)(2)(A), (B), 104(a), Sept. 13, 1960, 74 Stat. 936, 937, 942; Pub. L. 87-256, §110(e)(2), Sept. 21, 1961, 75 Stat. 537; Pub. L. 87-293, title II, §202(b)(1), Sept. 22, 1961, 75 Stat. 626; Pub. L. 89-97, title III, §§311(a)(3), (4), 317(a), July 30, 1965, 79 Stat. 380, 381, 388; Pub. L. 90-248, title I, §123(a), title IV, §403(a), Jan. 2, 1968, 81 Stat. 844, 931; Pub. L. 92-603, title I, §§123(a)(1), 128(a), 129(a)(1), Oct. 30, 1972, 86 Stat. 1354, 1358, 1359; Pub. L. 93-445, title III, §311, Oct. 16, 1974, 88 Stat. 1359; Pub. L. 94-455, title XII, §1207(e)(2)(A), Oct. 4, 1976, 90 Stat. 1707; Pub. L. 94-563, §1(a), Oct. 19, 1976, 90 Stat. 2655; Pub. L. 95-216, title III, §351(a)(1), (3)(B), Dec. 20, 1977, 91 Stat. 1549; Pub. L. 95-600, title VII, §703(j)(14)(C), Nov. 6, 1978, 92 Stat. 2942; Pub. L. 97-248, title II, §§269(b), 278(b)(1), Sept. 3, 1982, 96 Stat. 552, 560; Pub. L. 97-448, title III, §309(b)(23), Jan. 12, 1983, 96 Stat. 2410; Pub. L. 98-21, title I, §§101(a), 102(a), title III, §§321(b), 322(a)(1), 323(a)(2), Apr. 20, 1983, 97 Stat. 67, 70, 118, 120, 121; Pub. L. 98-369, div. B, title VI, §§2601(a), 2603(a)(1), 2661(j), 2663(a)(7), (j)(3)(A)(i), July 18, 1984, 98 Stat. 1122, 1128, 1157, 1162, 1170; Pub. L. 99-221, §3(b), Dec. 26, 1985, 99 Stat. 1735; Pub. L. 99-272, title XIII, §§13205(b)(1), 13303(c)(2), Apr. 7, 1986, 100 Stat. 316, 327; Pub. L. 99-335, title III, §304(a), June 6, 1986, 100 Stat. 606; Pub. L. 99-514, title XVIII, §§1883(a)(4), 1895(b)(18)(B), (19), Oct. 22, 1986, 100 Stat. 2916, 2935; Pub. L. 100-203, title IX, §§9001(a)(1), 9004(a), 9005(a), 9023(a), Dec. 22, 1987, 101 Stat. 1330-286 to 1330-288, 1330-295; Pub. L. 100-647, title I, §1001(d)(2)(E), title VIII, §§8015(b)(1), (c)(1), 8016(a)(4)(B), (C), Nov. 10, 1988, 102 Stat. 3351, 3791-3793; Pub. L. 101-239, title X, §10201(b)(1), Dec. 19, 1989, 103 Stat. 2472; Pub. L. 101-508, title XI, §11332(a), Nov. 5, 1990, 104 Stat. 1388-469; Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103-178, title II, §204(d), Dec. 3, 1993, 107 Stat. 2033; Pub. L. 103-296, title I, §107(a)(4), title III, §§303(a)(1), (b)(1), 319(b)(1), (3), 320(b), 321(a)(13), (c)(6)(C), (D), Aug. 15, 1994, 108 Stat. 1478, 1518, 1519, 1534-1536, 1538; Pub. L. 103-387, §2(a)(2)(B), Oct. 22, 1994, 108 Stat. 4072; Pub. L. 104-188, title I, §1116(a)(2), Aug. 20, 1996, 110 Stat. 1762; Pub. L. 105-61, title VI, §642(d)(1), Oct. 10, 1997, 111 Stat. 1319; Pub. L. 105-33, title XI, §11246(b)(2)(B), 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. 108-203, title IV, §423(c), Mar. 2, 2004, 118 Stat. 536; Pub. L. 109-280, title VIII, §854(c)(9), Aug. 17, 2006, 120 Stat. 1019; Pub. L. 110-245, title III, §302(b), June 17, 2008, 122 Stat. 1648; Pub. L. 110-458, title I, §108(k)(2), Dec. 23, 2008, 122 Stat. 5110.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in text, is classified to Title 26, Internal Revenue Code.

The Civil Service Retirement and Disability Fund, referred to in subsec. (a)(5)(B)(ii), (G), is provided for in section 8348 of Title 5, Government Organization and Employees.

Section 301 of the Federal Employees' Retirement System Act of 1986, referred to in subsec. (a)(5)(H)(i), is

section 301 of Pub. L. 99-335, which is set out as a note under section 8331 of Title 5.

The Federal Employees' Retirement System Open Enrollment Act of 1997, referred to in subsec. (a)(5)(H)(i), is section 642 of Pub. L. 105-61, title VI, Oct. 10, 1997, 111 Stat. 1318, which amended this section and section 3121 of Title 26, Internal Revenue Code, and enacted provisions set out as 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. (a)(5)(H)(ii), is Pub. L. 96-465, Oct. 17, 1980, 94 Stat. 2071. 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. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

The International Organizations Immunities Act, referred to in subsec. (a)(15), is act Dec. 29, 1945, ch. 652, title I, 59 Stat. 669, which is classified principally to subchapter XVIII (§288 et seq.) of chapter 7 of Title 22. For complete classification of that Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

The Internal Security Act of 1950, referred to in subsec. (a)(17), is act Sept. 23, 1950, ch. 1024, 64 Stat. 987, 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 1141j(g) of title 12, referred to in subsec. (f)(3), was redesignated section 1141j(f) by Pub. L. 110-246, title I, §1610, June 18, 2008, 122 Stat. 1746.

The Military Selective Service Act, referred to in subsec. (m)(5)(B), is act June 24, 1948, ch. 625, 62 Stat. 604, which is classified principally to section 451 et seq. of Title 50, Appendix. 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.

The Peace Corps Act, referred to in subsec. (o), is Pub. L. 87-293, Sept. 22, 1961, 75 Stat. 612, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of that Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

AMENDMENTS

2008—Subsec. (a)(5)(E). Pub. L. 110-458 struck out “or special trial judge” before “of the United States Tax Court”.

Subsec. (e). Pub. L. 110-245 designated existing provisions as par. (1), redesignated former cls. (1) to (6) as cls. (A) to (F), respectively, of par. (1), and added par. (2).

2006—Subsec. (a)(5)(E). Pub. L. 109-280 inserted “or special trial judge” before “of the United States Tax Court”.

2004—Subsec. (f)(5). Pub. L. 108-203 struck out “or is domestic service in a private home of the employer” before period at end.

1998—Subsec. (a)(7)(D). Pub. L. 105-277 added Pub. L. 105-33, §11246(b)(2)(B). See 1997 Amendment note below.

1997—Subsec. (a)(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 “section 2157 of title 50.”

Subsec. (a)(7)(D). Pub. L. 105-33, §11246(b)(2)(B), as added by Pub. L. 105-277, inserted “(other than the Federal Employees Retirement System provided in chapter 84 of title 5)” after “United States” in introductory provisions.

1996—Subsec. (a). Pub. L. 104-188, §1116(a)(2)(A), inserted at end “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. (a)(20)(A). Pub. L. 104-188, §1116(a)(2)(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). Pub. L. 103-296, §321(c)(6)(C), substituted “1986” for “1954” after “Code of” in introductory provisions.

Subsec. (a)(5)(B)(i)(V). Pub. L. 103-296, §321(a)(13), made technical amendment to reference to section 4501(e)(2) of title 25 to reflect renumbering of corresponding section of original act.

Subsec. (a)(7)(F)(iv). Pub. L. 103-296, §303(a)(1), 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 418(c)(8)(B) of this title for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year” for “\$100”.

Subsec. (a)(8)(A), (B), (9). Pub. L. 103-296, §321(c)(6)(C), substituted “1986” for “1954” after “Code of”.

Subsec. (a)(10)(B). Pub. L. 103-296, §321(c)(6)(C), substituted “1986” for “1954” after “Code of”.

Pub. L. 103-296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary”.

Subsec. (a)(15). Pub. L. 103-296, §319(b)(3), inserted before semicolon at end “, except service which constitutes ‘employment’ under subsection (r) of this section”.

Subsec. (a)(19). Pub. L. 103-296, §320(b), substituted “(J), (M), or (Q)” for “(J), or (M)” in two places.

Subsec. (a)(21). Pub. L. 103-387 added par. (21).

Subsec. (i)(4). Pub. L. 103-296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing and “the Commissioner receives” for “he receives” in subpar. (B).

Subsec. (p)(2)(E). Pub. L. 103-296, §303(b)(1), 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 418(c)(8)(B) of this title for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year” for “\$100”.

Subsecs. (p)(4), (q). Pub. L. 103-296, §321(c)(6)(D), substituted “1986” for “1954” after “Code of”.

Subsec. (r). Pub. L. 103-296, §319(b)(1), added subsec. (r).

1993—Subsec. (a)(5)(H)(i). Pub. L. 103-178 substituted “section 2157 of title 50” for “section 307 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees”.

1992—Subsec. (a)(5)(E). Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

1990—Subsec. (a)(7)(F). Pub. L. 101-508 added subpar. (F).

1989—Subsec. (a). Pub. L. 101-239 substituted “3121(i)(6)” for “3121(i)(8)” in introductory provisions.

1988—Subsec. (a)(5). Pub. L. 100-647, §8015(c)(1), in provision following subpar. (B) inserted “any such service performed on or after any date on which such individual performs” after “with respect to”.

Subsec. (a)(5)(H). Pub. L. 100-647, §8015(b)(1), amended subpar. (H) generally. Prior to amendment, subpar. (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.”

Subsec. (a)(19). Pub. L. 100-647, §1001(d)(2)(E), substituted “(F), (J), or (M)” for “(F) or (J)” in two places.

Subsec. (a)(20). Pub. L. 100-647, §8016(a)(4)(B), (C), amended Pub. L. 99-272, §13303(c)(2), see 1986 Amendment note below.

1987—Subsec. (a)(3)(A). Pub. L. 100-203, §9005(a)(1), substituted “18” for “twenty-one”.

Pub. L. 100-203, §9004(a)(1), struck out reference to service performed by an individual in the employ of his spouse.

Subsec. (a)(3)(B). Pub. L. 100-203, §9005(a)(2), inserted reference to an individual under the age of 21 in the employ of his father or mother.

Pub. L. 100-203, §9004(a)(2), substituted introductory provisions for 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. (l)(1). Pub. L. 100-203, §9001(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Except as provided in paragraph (4) of this subsection, the term 'employment' shall, notwithstanding the provisions of subsection (a) of this section, include service performed after December 1956 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. (p). Pub. L. 100-203, §9023(p), directed that the heading of subsec. (p) be amended to read the same as it was set out in the general amendment of subsec. (p) by Pub. L. 99-272, see 1986 Amendment note below.

1986—Subsec. (a)(5)(G). Pub. L. 99-514, §1883(a)(4), substituted "any other service" for "Any other service".

Subsec. (a)(5)(H). Pub. L. 99-335 added subpar. (H).

Subsec. (a)(20). Pub. L. 99-272, §13303(c)(2), as amended by Pub. L. 100-647, §8016(a)(4)(B), (C), substituted "Service (other than service described in paragraph (3)(A)) performed" for "Service performed" in introductory provisions.

Subsec. (p). Pub. L. 99-272, §13205(b)(1), amended subsec. (p) generally. Prior to amendment, subsec. (p) read as follows: "For purposes of sections 426 and 426-1 of this title, the term 'medicare qualified Federal employment' means any service which would constitute 'employment' as defined in subsection (a) of this section but for the application of the provisions of subsection (a)(5) of this section."

Subsec. (p)(2)(E). Pub. L. 99-514, §1895(b)(18)(B), added subpar. (E).

Subsec. (p)(4)(B). Pub. L. 99-514, §1895(b)(19), struck out quotation marks before "(A)".

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

1984—Subsec. (a). Pub. L. 98-369, §2661(j), struck out the second comma after "such affiliate".

Subsec. (a)(1). Pub. L. 98-369, §2663(a)(7)(A), struck out "(A) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended, or (B)".

Subsec. (a)(5)(B). Pub. L. 98-369, §2601(a)(1), in amending subpar. (B) generally, substituted "(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," for "(i) has been continuously in the employ of the United States or an instrumentality thereof since December 31, 1983 (and for this purpose an individual who returns to the performance of such service after being separated therefrom following a previous period of such service shall nevertheless be considered upon such return as having been continuously in the employ of the United States or an instrumentality thereof, regardless of whether the period of such separation began before, on, or after December 31, 1983, if the period of such separation does not exceed 365 consecutive days)," added subcls. (II) to (IV), and reenacted cl. (ii).

Subsec. (a)(5)(C) to (F). Pub. L. 98-369, §2601(a)(2)(A), (B), in provisions following "except that this paragraph shall not apply with respect to—" redesignated cls. (i),

(ii), (iii), and (iv) as subpars. (C), (D), (E), and (F), respectively, and redesignated former subcls. (I), (II), and (III) as cls. (i), (ii), and (iii), respectively, of the redesignated subpar. (D).

Subsec. (a)(5)(G). Pub. L. 98-369, §2601(a)(2)(A), (C), in provisions following "except that this paragraph shall not apply with respect to—" redesignated former cl. (v) as subpar. (G), and in subpar. (G) as so redesignated, designated the existing provisions of subpar. (G) as the introductory language and the first phrase of cl. (i) and added the remainder of cl. (i) following "chapter 38 of title 5", cls. (ii) and (iii), and the provisions following cl. (iii).

Subsec. (a)(7)(D). Pub. L. 98-369, §2663(a)(7)(B), realigned margins of subpar. (D).

Subsec. (a)(8). Pub. L. 98-369, §2603(a)(1), designated existing provisions as subpar. (A), substituted "this subparagraph" for "this paragraph", and added subpar. (B).

Subsec. (a)(9). Pub. L. 98-369, §2663(a)(7)(C), substituted "section 3231 of the Internal Revenue Code of 1954" for "section 1532 of the Internal Revenue Code of 1939".

Subsec. (a)(10)(B). Pub. L. 98-369, §2663(j)(3)(A)(i), struck out "of Health, Education, and Welfare" after "Secretary".

Subsec. (a)(19). Pub. L. 98-369, §2663(a)(7)(D), struck out the comma after "; or".

Subsec. (l)(2). Pub. L. 98-369, §2663(a)(7)(E), substituted "paragraph (21) of section 101 of title 38" for "section 102 of the Servicemen's and Veterans' Survivor Benefits Act" and "paragraph (22) of such section" for "such section".

Subsec. (l)(3). Pub. L. 98-369, §2663(a)(7)(F), substituted "paragraph (23) of such section 101" for "such section 102".

Subsec. (l)(4)(A). Pub. L. 98-369, §2663(j)(3)(A)(i), struck out "of Health, Education, and Welfare" after "Secretary".

Subsec. (m). Pub. L. 98-369, §2663(a)(7)(G)(i), (ii), in provisions preceding par. (1), substituted "a reserve component as defined in section 101(27) of title 38" 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 reference to the National Oceanic and Atmospheric Administration Corps.

Subsec. (m)(5). Pub. L. 98-369, §2663(a)(7)(G)(iii), substituted "military, naval, or air" for "military or naval" wherever appearing.

Subsec. (m)(5)(B). Pub. L. 98-369, §2663(a)(7)(G)(iv), substituted "Military Selective Service Act" for "Universal Military Training and Service Act".

1983—Subsec. (a). Pub. L. 98-21, §322(a)(1), added cl. (C) and struck out "either" before "A" in provisions preceding par. (1).

Pub. L. 98-21, §321(b), amended cl. (B) in provisions preceding par. (1) generally, substituting reference to section 3121(l)(8) of the Internal Revenue Code of 1954 for reference to section 3121(l) of such Code "an American employer" for "a domestic corporation (as determined in accordance with section 7701 of the Internal Revenue Code of 1954)", and "affiliate" for "subsidiary" after "with respect to such".

Pub. L. 98-21, §323(a)(2), substituted "a citizen or resident of the United States" for "a citizen of the United States" in cl. (B) in provisions preceding par. (1).

Subsec. (a)(5). Pub. L. 98-21, §101(a)(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 1410 of the Internal Revenue Code of 1939, by virtue of any provision of law which specifically refers to such section in granting such exemption;"

Subsec. (a)(6). Pub. L. 98-21, §101(a)(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 Production and Marketing Administration;

“(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, 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 does not apply because such individual is subject to another retirement system (other than the retirement system of the Tennessee Valley Authority);”

Subsec. (a)(8). Pub. L. 98-21, §102(a), struck out subpar. (A) designation, struck out subpar. (B) which had related to service performed by employees of nonprofit organizations, and substituted “this paragraph” for “this subparagraph”.

Subsec. (p). Pub. L. 98-21, §101(a)(2), struck out designations for pars. (1) and (2) and struck out par. (1) which related to application of the provisions of subparagraph (A), (B), or (C)(i), (ii), or (vi) of subsection (a)(6) of this section.

Subsec. (q). Pub. L. 97-448 redesignated subsec. (p), relating to treatment of real estate agents and direct sellers, as (q).

1982—Subsec. (p). Pub. L. 97-248, §269(b), added subsec. (p) relating to treatment of real estate agents and direct sellers.

Pub. L. 97-248, §278(b)(1), added subsec. (p) relating to medicare qualified Federal employment.

1978—Subsec. (a)(6)(B)(v). Pub. L. 95-600 substituted “Secretary of Transportation” for “Secretary of the Treasury”.

1977—Subsec. (a)(10). Pub. L. 95-216, §351(a)(3)(B), struck out subpar. (A) which related to service performed in the employ of any exempt organization under section 101 of the Internal Revenue Code of 1939, and designated existing provisions of subpar. (B) as entire subsec. (a)(10) and, as so designated, redesignated cls. (i) and (ii) as subpars. (A) and (B).

Subsecs. (a)(17)(A), (f)(4)(B). Pub. L. 95-216, §351(a)(1), substituted “year” for “quarter”.

1976—Subsec. (a)(8)(B). Pub. L. 94-563 inserted “(or deemed to have been so filed under paragraph (4) or (5) of such section 3121(k))” after “section 3121(k) of the Internal Revenue Code of 1954” 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. (a)(20). Pub. L. 94-455 added par. (20).

1974—Subsec. (l)(4)(A). Pub. L. 93-445 substituted “section 231b(i) of title 45” for “section 228c-1 of title 45” and struck out “, as provided in section 228c-1(p)(2) of title 45” after “notify the Secretary of Health, Education, and Welfare”.

1972—Subsec. (a)(7)(E). Pub. L. 92-603, §128(a), added subpar. (E).

Subsec. (a)(8)(A). Pub. L. 92-603, §123(a)(1), inserted provisions referring to the election of coverage under section 3121(r) of the Internal Revenue Code of 1954.

Subsec. (a)(10)(B). Pub. L. 92-603, §129(a)(1), designated existing provisions as cl. (i) and added cl. (ii).

1968—Subsec. (a)(3)(B). Pub. L. 90-248, §123(a), inserted exception provision including cls. (i) to (iii).

Subsec. (a)(6)(C)(iv). Pub. L. 90-248, §403(a)(1), substituted reference to section 5351(2) of title 5 for former section 1052 of title 5.

Subsec. (a)(6)(C)(vi). Pub. L. 90-248, §403(a)(2), substituted “subchapter III of chapter 83 of title 5” for “the Civil Service Retirement Act”.

Subsec. (a)(7)(D)(ii). Pub. L. 90-248, §403(a)(3), substituted reference to section 5351(2) of title 5 for former section 1052 of title 5.

1965—Subsec. (a)(6)(C)(iv). Pub. L. 89-97, §311(a)(3), inserted “, other than as a medical or dental intern or a medical or dental resident in training”.

Subsec. (a)(7)(D). Pub. L. 89-97, §317(a)(3), added subpar. (D).

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

1961—Subsec. (a)(19). Pub. L. 87-256 added par. (19).

Subsec. (o). Pub. L. 87-293 added subsec. (o).

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

Subsec. (a)(7). Pub. L. 86-778, §103(c), 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, performed by an officer or employee thereof.

Subsec. (a)(18). Pub. L. 86-778, §103(d), added par. (18).

Subsec. (h). Pub. L. 86-778, §103(e), included Guam and American Samoa.

Pub. L. 86-624 substituted “includes the District of Columbia and” for “includes Hawaii, the District of Columbia, and”.

Subsec. (i). Pub. L. 86-778, §103(f), included Guam and American Samoa.

Pub. L. 86-624 struck out “Hawaii,” before “the District of Columbia.”

Subsecs. (j) to (o). Pub. L. 86-778, §103(j)(2)(A), (B), repealed subsec. (j) and redesignated subsecs. (l) to (o) as (k) to (n), respectively.

1959—Subsec. (a)(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.

Subsecs. (h), (i). Pub. L. 86-70 struck out “Alaska,” before “Hawaii”.

1958—Subsec. (a)(1). Pub. L. 85-840, §311(a), struck out provisions which excluded from coverage service performed in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 1141j(g) of title 12.

Subsec. (a)(8)(B). Pub. L. 85-840, §312(a), substituted references to the Internal Revenue Code of 1954 for references to the Internal Revenue Code of 1939, and inserted provisions making 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 3121(k)(1)(E) of the Internal Revenue Code of 1954 became a member of such group, and making subparagraph applicable with respect to service performed by an employee as a member of a group described in section 3121(k)(1)(E) with respect to which no certificate is in effect.

1956—Subsec. (a)(1)(B). Act Aug. 1, 1956, ch. 836, §104(a), excluded from coverage service performed by foreign agricultural workers lawfully admitted on a temporary basis from any foreign country or possession thereof.

Subsec. (a)(6)(B)(ii). Act Aug. 1, 1956, ch. 836, §104(b)(1), included service performed in the employ of a Federal Home Loan Bank.

Subsec. (a)(6)(C)(vi). Act Aug. 1, 1956, ch. 836, §104(b)(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. (a)(16), (17). Act Aug. 1, 1956, ch. 836, §§104(c)(1), 121(c), added pars. (16) and (17).

Subsecs. (m), (n). Act Aug. 1, 1956, ch. 837, added subsecs. (m) and (n).

Subsec. (o). Act Aug. 1, 1956, ch. 836, §105(b), added subsec. (o).

1954—Subsec. (a)(B). Act Sept. 1, 1954, §101(m), included within definition of “employment” service performed outside the United States by citizens of the United States as employees for foreign subsidiaries of domestic corporations under certain conditions.

Subsec. (a)(1). Act Sept. 1, 1954, §101(a)(4), removed 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. (a)(3). Act Sept. 1, 1954, §101(a)(5), redesignated par. (4) as (3) and struck out former par. (3).

Subsec. (a)(4). Act Sept. 1, 1954, §101(a)(5), (b), redesignated par. (5) as (4), and made the exclusion 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. Former par. (4) redesignated (3).

Subsec. (a)(5). Act Sept. 1, 1954, §101(a)(5), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (a)(6)(B). Act Sept. 1, 1954, §101(a)(5), (c)(1)(A), redesignated par. (7) as (6), and inserted “by an individual” after “Service performed” and “and if such service is covered by a retirement system established by such instrumentality,” after “December 31, 1950.”

Subsec. (a)(6)(B)(v). Act Sept. 1, 1954, §101(a)(5), (c)(1)(A), redesignated par. (7) as (6), and added cl. (v).

Subsec. (a)(6)(C). Act Sept. 1, 1954, §101(a)(5), (c)(2), redesignated par. (7) as (6), and 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 com-

munity committees under the Production and Marketing Administration and similar bodies, unless such bodies are composed exclusively of full-time Federal employee and limited the exclusion of inmates or patients of United States institutions to inmates of penal institutions.

Subsec. (a)(7) to (17). Act Sept. 1, 1954, §101(a)(5), (e), struck out par. (15) and redesignated pars. (7) to (14), (16), and (17) as (6) to (15), respectively.

Subsec. (k)(3)(C). Act Sept. 1, 1954, §101(f), struck out requirement that services of homeworkers be subject to State licensing laws in order to constitute covered employment.

1951—Subsec. (a)(1)(C). Act Oct. 31, 1949, §505(a), as added by act July 12, 1951, added subpar. (C).

1950—Act Aug. 28, 1950, substituted a new section 410 for former section 410.

CHANGE OF NAME

“United States magistrate judge” substituted for “United States magistrate” in subsec. (a)(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.

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 the Environmental Science Services Administration changed to Commissioned Officer Corps of National Oceanic and Atmospheric Administration, see Reorg. Plan No. 4 of 1970, §4(d), eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5.

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 Title 26, Internal Revenue Code.

Amendment by Pub. L. 110-245 applicable to services performed in calendar months beginning more than 30 days after June 17, 2008, see section 302(c) of Pub. L. 110-245, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-277 effective, except as otherwise specifically provided, as if included in the enactment of title XI of the Balanced Budget Act of 1997, Pub. L. 105-33, see section 101(h) [title VIII, §805] of Pub. L. 105-277, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 applicable 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, see section 11246(b)(4) of Pub. L. 105-33, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to remuneration paid after Dec. 31, 1994, and, unless payor treated such remuneration (when paid) as being subject to tax under chapter 21 of Title 26, Internal Revenue Code, after Dec. 31, 1984, and before Jan. 1, 1995, see section 1116(a)(3) of Pub. L. 104-188, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103-387 applicable to services performed after Dec. 31, 1994, see section 2(a)(3)(B) of Pub. L. 103-387, set out as a note under section 3102 of Title 26, Internal Revenue Code.

Amendment by section 107(a)(4) 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 this title.

Section 303(e) of Pub. L. 103-296 provided that: "The amendments made by subsections (a), (b), and (c) [amending this section, section 418 of this title, and section 3121 of Title 26, Internal Revenue Code] shall apply with respect to service performed on or after January 1, 1995."

Amendment by section 319(b)(1), (3) 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 Title 26, Internal Revenue Code.

Amendment by section 320(b) 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 Title 26.

EFFECTIVE DATE OF 1992 AMENDMENT

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.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable with respect to service performed after July 1, 1991, see section 11332(d) of Pub. L. 101-508, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 applicable with respect to any agreement in effect under section 3121(f) of Title 26, Internal Revenue Code, 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 Title 26.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(d)(2)(E) 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 Title 26, Internal Revenue Code.

Amendment by section 8015(b)(1) of Pub. L. 100-647 applicable as if such amendment had been included or reflected in section 304 of Federal Employees' Retirement System Act of 1986, Pub. L. 99-335, at the time of its enactment (June 6, 1986), see section 8015(b)(3) of Pub. L. 100-647, set out as a note under section 3121 of Title 26.

Amendment by section 8015(c)(1) of Pub. L. 100-647 applicable to any individual only upon the performance by such individual of service described in subpar. (C), (D), (E), (F), (G), or (H) of subsec. (a)(5) of this section on or after Nov. 10, 1988, see section 8015(c)(3) of Pub. L. 100-647, set out as a note under section 3121 of Title 26.

Amendment by section 8016(a)(4)(B), (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 Title 26, 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 Title 26.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9001(a)(1) of Pub. L. 100-203 applicable with respect to remuneration paid after Dec. 31, 1987, see section 9001(d) of Pub. L. 100-203, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 9004(a) of Pub. L. 100-203 applicable with respect to remuneration paid after Dec.

31, 1987, see section 9004(c) of Pub. L. 100-203, set out as a note under section 3121 of Title 26.

Amendment by section 9005(a) of Pub. L. 100-203 applicable with respect to remuneration paid after Dec. 31, 1987, see section 9005(c) of Pub. L. 100-203, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1883(a)(4) of Pub. L. 99-514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99-514, set out as a note under section 402 of this title.

Amendment by section 1895(b)(18)(B) of Pub. L. 99-514 applicable to services performed after Mar. 31, 1986, see section 1895(b)(18)(C) of Pub. L. 99-514, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 1895(b)(19) of Pub. L. 99-514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, see section 1895(e) of Pub. L. 99-514, set out as a note under section 162 of Title 26.

Section 13205(d)(2) of Pub. L. 99-272 provided that:

"(A) IN GENERAL.—The amendments made by subsection (b) [amending this section and sections 426, 426-1, and 1395c of this title] shall be effective after March 31, 1986, and the amendments made by paragraph (3) of that subsection [subsection does not contain a paragraph (3)] shall apply to services performed (for medicare qualified government employment) after that date.

"(B) TREATMENT OF CERTAIN DISABILITIES.—For purposes of establishing entitlement to hospital insurance benefits under part A of title XVIII of the Social Security Act [section 1395c et seq. of this title] pursuant to the amendments made by subsection (b), no individual may be considered to be under a disability for any period beginning before April 1, 1986."

EFFECTIVE DATE OF 1985 AMENDMENT

Section 3(c) of Pub. L. 99-221 provided that: "The amendments made by subsection (b) [amending this section and section 3121 of Title 26, Internal Revenue Code] apply to any return to the performance of service in the employ of the United States, or of an instrumentality thereof, after 1983."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2601(f) of Pub. L. 98-369 provided that: "Except as provided in subsection (d) [set out as a Qualification and Requalification of Federal Employees for Benefits note below], the amendments made by subsections (a) and (b) [amending this section and section 3121 of Title 26, Internal Revenue Code] (and provisions of subsection (e) [set out as a Services Performed for Nonprofit Organizations by Federal Employees note below]) shall be effective with respect to service performed after December 31, 1983."

Section 2603(e) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section and section 411 of this title and sections 1402 and 3121 of Title 26 and enacting provisions set out as a note under section 3121 of Title 26] shall apply to service performed after December 31, 1983."

Amendment by section 2661(j) of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(7), (j)(3)(A)(i) 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 this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 101(a) of Pub. L. 98-21 effective with respect to service performed after Dec. 31,

1983, see section 101(d) of Pub. L. 98-21, as amended, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 102(a) of Pub. L. 98-21 effective with respect to service performed after Dec. 31, 1983, see section 102(c) of Pub. L. 98-21, set out as a note under section 3121 of Title 26.

Amendment by section 321(b) 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 Title 26.

Amendment by section 322(a)(1) of Pub. L. 98-21 effective in taxable years beginning on or after Apr. 20, 1983, see section 322(c) of Pub. L. 98-21, set out as a note under section 3121 of Title 26.

Amendment by section 323(a)(2) of Pub. L. 98-21 applicable to remuneration paid after Dec. 31, 1983, see section 323(c)(1) of Pub. L. 98-21, set out as a note under 3121 of Title 26.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 269(b) of Pub. L. 97-248 applicable to services performed after Dec. 31, 1982, see section 269(e)(1) of Pub. L. 97-248, set out as an Effective Date note under section 3508 of Title 26, Internal Revenue Code.

Amendment by section 278(b)(1) of Pub. L. 97-248 effective on and after Jan. 1, 1983, see section 278(c)(2)(A) of Pub. L. 97-248, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as a note under section 46 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-216 applicable with respect to remuneration paid and services rendered after Dec. 31, 1977, see section 351(d) of Pub. L. 95-216, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-563 applicable 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 Title 26, see section 1(d) of Pub. L. 94-563, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-445 effective Jan. 1, 1975, see section 603 of Pub. L. 93-445, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 128(c) of Pub. L. 92-603 provided that: "The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply with respect to service performed on and after the first day of the first calendar quarter which begins on or after the date of the enactment of this Act [Oct. 30, 1972]."

Section 129(b) of Pub. L. 92-603 provided that: "The amendments made by subsection (a) [amending this section and section 3121 of Title 26] shall apply to services performed after December 31, 1972."

EFFECTIVE DATE OF 1968 AMENDMENT

Section 123(c) of Pub. L. 90-248 provided that: "The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply with respect to services performed after December 31, 1967."

EFFECTIVE DATE OF 1965 AMENDMENT

Section 311(c) of Pub. L. 89-97 provided that: "The amendments made by paragraphs (1) and (2) of sub-

section (a) [amending section 411 of this title], and by paragraphs (1), (2), and (3) of subsection (b) [amending section 1402 of Title 26, Internal Revenue Code], shall apply only with respect to taxable years ending on or after December 31, 1965. The amendments made by paragraphs (3) and (4) of subsection (a) [amending this section], and by paragraphs (4) and (5) of subsection (b) [amending section 3121 of Title 26], shall apply only with respect to services performed after 1965."

Section 317(g) of Pub. L. 89-97 provided that: "The amendments made by this section [amending this section and sections 3121, 3125, 6205, and 6413 of Title 26, Internal Revenue Code] shall apply with respect to service performed after the calendar quarter in which this section is enacted and after the calendar quarter in which the Secretary of the Treasury receives a certification from the Commissioners of the District of Columbia expressing their desire to have the insurance system established by title II (and part A of title XVIII) of the Social Security Act [this subchapter and part A of subchapter XVIII of this chapter] extended to the officers and employees coming under the provisions of such amendments."

EFFECTIVE DATE OF 1961 AMENDMENTS

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 Title 26, Internal Revenue Code.

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 Title 26.

EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment by section 103(c) 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, this subchapter, 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 this subchapter extended to the officers and employees of such Government and such political subdivisions and instrumentalities, see section 103(v)(1), (2) of Pub. L. 86-778, set out as a note under section 402 of this title.

Amendment by section 103(d) 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 this title.

Amendment by section 103(e), (f) of Pub. L. 86-778 applicable only with respect to service performed after 1960, except that insofar as the carrying on of a trade or business (other than performance of service as an employee) is concerned, the amendment shall be applicable only in the case of taxable years beginning after 1960, see section 103(v)(1), (3) of Pub. L. 86-778, set out as a note under section 402 of this title.

Amendment by section 103(j)(2)(A), (B) of Pub. L. 86-778 effective Sept. 13, 1960, see section 103(v)(1), (3) of

Pub. L. 86-778, set out as a note under section 402 of this title.

Section 104(c) of Pub. L. 86-778 provided that: “The amendments made by subsections (a) and (b) [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply only with respect to services performed after 1960.”

Amendment by Pub. L. 86-624 effective Aug. 21, 1959, see section 47(f) of Pub. L. 86-624, set out as a note under section 201 of this title.

EFFECTIVE DATE OF 1959 AMENDMENTS

Amendment by Pub. L. 86-168 effective Jan. 1, 1960, see section 203(c) of Pub. L. 86-168.

Amendment by Pub. L. 86-70 effective Jan. 3, 1959, see section 47(d) of Pub. L. 86-70.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 311(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 312(b) of Pub. L. 85-840, 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 certificates filed under section 3121(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 3121(k)(1) of Title 26, Internal Revenue Code] after the date of enactment of this Act [Aug. 28, 1958].”

EFFECTIVE DATE OF 1956 AMENDMENTS

Amendment by act Aug. 1, 1956, ch. 837, effective Jan. 1, 1957, see section 603(a) of act Aug. 1, 1956.

Section 104(i) of act Aug. 1, 1956, ch. 836, as amended by Pub. L. 92-603, title I, § 125(b), Oct. 30, 1972, 86 Stat. 1357, provided that:

“(1) The amendment made by subsection (a) [amending this section] shall apply with respect to service performed after 1956. The amendments made by paragraph (1) of subsection (c) [amending this section] shall apply with respect to service performed after 1954. The amendment made by paragraph (2) of subsection (c) [amending section 411 of this title] shall apply with respect to taxable years ending after 1955. The amendment made by paragraph (3) of subsection (c) [amending section 411 of this title] shall apply with respect to taxable years ending after 1954. The amendment made by subsection (d) [amending section 411 of this title] shall apply with respect to taxable years ending after 1955. The amendment made by subsection (h) [amending section 411 of this title] shall apply with respect to the same taxable years with respect to which the amendment made by section 201(g) of this Act [amending section 1402 of Title 26, Internal Revenue Code] applies.

“(2)(A) Except as provided in subparagraphs (B) and (C), the amendments made by subsection (b) [amending this section] shall apply only with respect to service performed after June 30, 1957, and only if—

“(i) [Repealed. Pub. L. 92-603, title I, § 125(b), Oct. 30, 1972, 86 Stat. 1357.]

“(ii) in the case of the amendment made by paragraph (2) of such subsection [amending this section], the conditions prescribed in subparagraph (C) are met.

“(B) [Repealed. Pub. L. 92-603, title I, § 125(b), Oct. 30, 1972, 86 Stat. 1357.]

“(C) The amendment made by paragraph (2) of subsection (b) [amending this section] shall be effective only if—

“(i) the Board of Directors of the Tennessee Valley Authority submits to the Secretary of Health, Education, and Welfare, and the Secretary approves, before July 1, 1957, a plan, with respect to employees of the Tennessee Valley Authority, for the coordination, on an equitable basis, of the benefits provided by the retirement system applicable to such employees with the benefits provided by title II of the Social Security Act [this subchapter]; and

“(ii) such plan specifies, as the effective date of the plan, July 1, 1957, or the first day of a prior calendar quarter beginning not earlier than January 1, 1956. If the plan specifies as the effective date of the plan a day before July 1, 1957, the amendment made by paragraph (2) of subsection (b) [amending this section] shall apply with respect to service performed on or after such effective date; except that, if such effective date is prior to the day on which the Secretary approves the plan, such amendment shall not apply with respect to service performed, prior to the day on which the Secretary approves the plan, by an individual who is not an employee of the Tennessee Valley Authority on such day.

“(D) The Secretary of Health, Education, and Welfare shall, on or before July 31, 1957, submit a report to the Congress setting forth the details of any plan approved by him under subparagraph (B) or (C).”

Amendment by section 105(b) of act Aug. 1, 1956, ch. 836, applicable with respect to service performed after 1956, see section 105(d) of such act Aug. 1, 1956, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 101(a)(4), (5) of act Sept. 1, 1954, applicable only with respect to services (whether performed after 1954 or prior to 1955) for which the remuneration is paid after 1954, and amendment by section 101(b), (c)(1), (2), (e), and (f) of act Sept. 1, 1954, applicable only with respect to services performed after 1954, see section 101(n) of act Sept. 1, 1954, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Section as added by section 104(a) of act Aug. 28, 1950, effective Jan. 1, 1951, see section 104(b) of act Aug. 28, 1950, set out as a note under section 409 of this title. Former section 410 was struck out effective Sept. 1, 1950, by section 105 of act Aug. 28, 1950.

LINE ITEM VETO

Section 642(d)(1) 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).

REPEALS: AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 202(b)(1) 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 Inter-course.

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, set out as a note under section 542 of Title 6.

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, set out as a note under section 401 of Title 26, Internal Revenue Code.

FEDERAL LEGISLATIVE BRANCH EMPLOYEES WHO CONTRIBUTE REDUCED AMOUNTS BY REASON OF THE FEDERAL EMPLOYEES' RETIREMENT CONTRIBUTION TEMPORARY ADJUSTMENT ACT OF 1983

Section 2601(c) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "For purposes of section 210(a)(5)(G) of the Social Security Act [subsec. (a)(5)(G) of this section] and section 3121(b)(5)(G) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(b)(5)(G)], an individual shall not be considered to be 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), if he is contributing a reduced amount by reason of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [Pub. L. 98-168, title II, Nov. 29, 1983, 97 Stat. 1106, set out as a note under section 8331 of Title 5, Government Organization and Employees]."

QUALIFICATION AND REQUALIFICATION OF FEDERAL EMPLOYEES FOR BENEFITS

Section 2601(d) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, title XVIII, §1883(a)(5)(A), Oct. 22, 1986, 100 Stat. 2916, provided that:

"(1) Any individual who—

"(A) was 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 (as determined for purposes of section 210(a)(5)(G) of the Social Security Act [subsec. (a)(5)(G) of this section]), and

"(B)(i) received a lump-sum payment under section 8342(a) of such title 5, or under the corresponding provision of the law establishing the other retirement system described in subparagraph (A), after December 31, 1983, and prior to June 15, 1984, or received such a payment on or after June 15, 1984, pursuant to an application which was filed in accordance with such section 8342(a) or the corresponding provision of the law establishing such other retirement system prior to that date, or

"(ii) otherwise ceased to be subject to subchapter III of chapter 83 of title 5, United States Code, for a period after December 31, 1983, to which section 210(a)(5)(G)(iii) of the Social Security Act applies, shall, if such individual again becomes subject to subchapter III of chapter 83 of title 5 (or effectively applies for coverage under such subchapter) after the date on which he last ceased to be subject to such subchapter but prior to, or within 30 days after, the date of the enactment of this Act [July 18, 1984], requalify for the exemption from social security coverage and taxes under section 210(a)(5) of the Social Security Act and section 3121(b)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(b)(5)] as if the cessation of coverage under title 5 had not occurred.

"(2) An individual meeting the requirements of subparagraphs (A) and (B) of paragraph (1) who is not in the employ of the United States or an instrumentality thereof on the date of the enactment of this Act [July 18, 1984] may requalify for such exemptions in the same manner as under paragraph (1) if such individual again becomes subject to subchapter III of chapter 83 of title 5 (or effectively applies for coverage under such subchapter) within 30 days after the date on which he first returns to service in the legislative branch after such date of enactment, if such date (on which he returns to

service) is within 365 days after he was last in the employ of the United States or an instrumentality thereof.

"(3) If an individual meeting the requirements of subparagraphs (A) and (B) of paragraph (1) does not again become subject to subchapter III of chapter 83 of title 5 (or effectively apply for coverage under such subchapter) prior to the date of the enactment of this Act or within the relevant 30-day period as provided in paragraph (1) or (2), social security coverage and taxes by reason of section 210(a)(5)(G) of the Social Security Act and section 3121(b)(5)(G) of the Internal Revenue Code of 1986 shall, with respect to such individual's service in the legislative branch of the Federal Government, become effective with the first month beginning after such 30-day period.

"(4) The provisions of paragraphs (1) and (2) shall apply only for purposes of reestablishing an exemption from social security coverage and taxes, and do not affect the amount of service to be credited to an individual for purposes of title 5, United States Code."

[Section 1883(a)(5) of Pub. L. 99-514 provided in part that amendment of above note by section 1883(a)(5)(A) of Pub. L. 99-514 is effective July 18, 1984.]

SERVICES PERFORMED FOR NONPROFIT ORGANIZATIONS BY FEDERAL EMPLOYEES

Section 2601(e) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) For purposes of section 210(a)(5) of the Social Security Act [subsec. (a)(5) of this section] (as in effect in January 1983 and as in effect on and after January 1, 1984) and section 3121(b)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(b)(5)] (as so in effect), service performed in the employ of a nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3)] by an employee who is required by law to be subject to subchapter III of chapter 83 of title 5, United States Code, with respect to such service, shall be considered to be service performed in the employ of an instrumentality of the United States.

"(2) For purposes of section 203 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [section 203 of Pub. L. 98-168, set out as a note under section 8331 of Title 5, Government Organization and Employees], service described in paragraph (1) which is also 'employment' for purposes of title II of the Social Security Act [this subchapter], shall be considered to be 'covered service'."

ACCRUED FEDERAL RETIREMENT ENTITLEMENTS; REDUCTION PROHIBITED

Section 101(e) of Pub. L. 98-21 provided that: "Nothing in this Act [see Short Title of 1983 Amendment note set out under section 1305 of this title] shall reduce the accrued entitlements to future benefits under the Federal Retirement System of current and retired Federal employees and their families."

COVERAGE OF FEDERAL HOME LOAN BANK EMPLOYEES

Section 125(a) of Pub. L. 92-603, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The provisions of section 210(a)(6)(B)(ii) of the Social Security Act [subsec. (a)(6)(B)(ii) of this section] and section 3121(b)(6)(B)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 3121(b)(6)(B)(ii) of Title 26, Internal Revenue Code], insofar as they relate to service performed in the employ of a Federal home loan bank, shall be effective—

"(1) with respect to all service performed in the employ of a Federal home loan bank on and after the first day of the first calendar quarter which begins on or after the date of the enactment of this Act [Oct. 30, 1972]; and

"(2) in the case of individuals who are in the employ of a Federal home loan bank on such first day, with respect to any service performed in the employ of a Federal home loan bank after the last day of the

sixth calendar year preceding the year in which this Act is enacted [1972]; but this paragraph shall be effective only if an amount equal to the taxes imposed by sections 3101 and 3111 of such Code [sections 3101 and 3111 of Title 26, Internal Revenue Code] with respect to the services of all such individuals performed in the employ of Federal home loan banks after the last day of the sixth calendar year preceding the year in which this Act is enacted [1972] are paid under the provisions of section 3122 of such Code [section 3122 of Title 26] by July 1, 1973, or by such later date as may be provided in an agreement entered into before such date with the Secretary of the Treasury or his delegate for purposes of this paragraph.”

COVERED EMPLOYMENT NOT COUNTED UNDER OTHER FEDERAL RETIREMENT SYSTEMS

Section 115 of act Sept. 1, 1954, which prohibited counting employment under other Federal retirement systems in determining eligibility for benefits under this subchapter, was repealed by Pub. L. 91-630, §1, Dec. 31, 1970, 84 Stat. 1875. Section 2 of Pub. L. 91-630 provided that such repeal shall not apply in the case of a person who, on Dec. 31, 1970, is receiving or is entitled to receive benefits under any retirement system established by the United States or any instrumentality thereof unless he requests, in writing, the office which administers his retirement system to apply it in this case, and that any additional benefits payable pursuant to such request shall commence on Jan. 1, 1971.

TERMINATION OF WAR AND EMERGENCIES

Joint Res. July 25, 1947, ch. 327, §3, 61 Stat. 451, provided that in the interpretation of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

§ 410a. Transferred

CODIFICATION

Section, act Aug. 29, 1935, ch. 812, §17, as added June 24, 1937, ch. 382, Pt. I, §1, 50 Stat. 317; amended Oct. 30, 1951, ch. 632, §24, 65 Stat. 690, was transferred to section 228q of Title 45, Railroads, and subsequently superseded. See section 231q of Title 45.

§ 411. Definitions relating to self-employment

For the purposes of this subchapter—

(a) Net earnings from self-employment

The term “net earnings from self-employment” means the gross income, as computed under subtitle A of the Internal Revenue Code of 1986, derived by an individual from any trade or business carried on by such individual, less the deductions allowed under such subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of the ordinary net income or loss, as computed under section 702(a)(8) of such Code, from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary net income or loss—

(1) There shall be excluded rentals from real estate and from personal property leased with the real estate (including such rentals paid in crop shares, and including payments under section 3833(2) of title 16 to individuals receiving benefits under section 402 or 423 of this title), together with the deductions attributable thereto, unless such rentals are received in the course of a trade or business as

a real estate dealer; except that the preceding provisions of this paragraph shall not apply to any income derived by the owner or tenant of land if (A) such income is derived under an arrangement, between the owner or tenant and another individual, which provides that such other individual shall produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land, and that there shall be material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) in the production or the management of the production of such agricultural or horticultural commodities, and (B) there is material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) with respect to any such agricultural or horticultural commodity;

(2) There shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest benefits¹ or in registered form by any corporation (including one issued by a government or political subdivision thereof), unless such dividends and interest are received in the course of a trade or business as a dealer in stocks or securities;

(3) There shall be excluded any gain or loss (A) which is considered under subtitle A of the Internal Revenue Code of 1986 as gain or loss from the sale or exchange of a capital asset, (B) from the cutting of timber, or the disposal of timber, coal, or iron ore, if section 631 of the Internal Revenue Code of 1986 applies to such gain or loss, or (C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither (i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor (ii) property held primarily for sale to customers in the ordinary course of the trade or business;

(4) The deduction for net operating losses provided in section 172 of the Internal Revenue Code of 1986 shall not be allowed;

(5)(A) If any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions;

(B) If any portion of a partner's distributive share of the ordinary net income or loss from a trade or business carried on by a partnership is community income or loss under the community property laws applicable to such share, all of such distributive share shall be

¹So in original. Probably should be “coupons”. See 2008 Amendment note below.