

(A) no credit for wage withholding is allowed under section 31 to such employer for the taxable year of the employer which begins in such calendar year, and

(B) no addition to tax would (but for this section) be imposed under section 6654 for such taxable year by reason of section 6654(e).

(3) Annualization

Under regulations prescribed by the Secretary, appropriate adjustments shall be made in the application of section 6654(d)(2) in respect of the amount treated as tax under paragraph (1).

(c) Domestic service employment taxes

For purposes of this section, the term “domestic service employment taxes” means—

(1) any taxes imposed by chapter 21 or 23 on remuneration paid for domestic service in a private home of the employer, and

(2) any amount withheld from such remuneration pursuant to an agreement under section 3402(p).

For purposes of this subsection, the term “domestic service in a private home of the employer” includes domestic service described in section 3121(g)(5).

(d) Exception where employer liable for other employment taxes

To the extent provided in regulations prescribed by the Secretary, this section shall not apply to any employer for any calendar year if such employer is liable for any tax under this subtitle with respect to remuneration for services other than domestic service in a private home of the employer.

(e) General regulatory authority

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section. Such regulations may treat domestic service employment taxes as taxes imposed by chapter 1 for purposes of coordinating the assessment and collection of such employment taxes with the assessment and collection of domestic employers’ income taxes.

(f) Authority to enter into agreements to collect State unemployment taxes

(1) In general

The Secretary is hereby authorized to enter into an agreement with any State to collect, as the agent of such State, such State’s unemployment taxes imposed on remuneration paid for domestic service in a private home of the employer. Any taxes to be collected by the Secretary pursuant to such an agreement shall be treated as domestic service employment taxes for purposes of this section.

(2) Transfers to State account

Any amount collected under an agreement referred to in paragraph (1) shall be transferred by the Secretary to the account of the State in the Unemployment Trust Fund.

(3) Subtitle F made applicable

For purposes of subtitle F, any amount required to be collected under an agreement under paragraph (1) shall be treated as a tax imposed by chapter 23.

(4) State

For purposes of this subsection, the term “State” has the meaning given such term by section 3306(j)(1).

(Added Pub. L. 103-387, §2(b)(1), Oct. 22, 1994, 108 Stat. 4073; amended Pub. L. 113-295, div. A, title II, §221(a)(102), Dec. 19, 2014, 128 Stat. 4052.)

PRIOR PROVISIONS

A prior section 3510, added Pub. L. 98-21, title I, §123(b)(1), Apr. 20, 1983, 97 Stat. 88, provided a credit for increased social security employee taxes and railroad retirement tier 1 employee taxes imposed during 1984, prior to repeal by Pub. L. 101-508, title XI, §11801(a)(42), Nov. 5, 1990, 104 Stat. 1388-521.

AMENDMENTS

2014—Subsec. (b)(4). Pub. L. 113-295 struck out par. (4). Text read as follows: “In the case of any taxable year beginning before January 1, 1998, no addition to tax shall be made under section 6654 with respect to any underpayment to the extent such underpayment was created or increased by this section.”

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 103-387, §2(b)(3), Oct. 22, 1994, 108 Stat. 4074, provided that: “The amendments made by this subsection [enacting this section] shall apply to remuneration paid in calendar years beginning after December 31, 1994.”

EXPANDED INFORMATION TO EMPLOYERS

Pub. L. 103-387, §2(b)(4), Oct. 22, 1994, 108 Stat. 4074, provided that: “The Secretary of the Treasury or the Secretary’s delegate shall prepare and make available information on the Federal tax obligations of employers with respect to employees performing domestic service in a private home of the employer. Such information shall also include a statement that such employers may have obligations with respect to such employees under State laws relating to unemployment insurance and workers compensation.”

§3511. Certified professional employer organizations

(a) General rules

For purposes of the taxes, and other obligations, imposed by this subtitle—

(1) a certified professional employer organization shall be treated as the employer (and no other person shall be treated as the employer) of any work site employee performing services for any customer of such organization, but only with respect to remuneration remitted by such organization to such work site employee, and

(2) the exemptions, exclusions, definitions, and other rules which are based on type of employer and which would (but for paragraph (1)) apply shall apply with respect to such taxes imposed on such remuneration.

(b) Successor employer status

For purposes of sections 3121(a)(1), 3231(e)(2)(C), and 3306(b)(1)—

(1) a certified professional employer organization entering into a service contract with a customer with respect to a work site employee

shall be treated as a successor employer and the customer shall be treated as a predecessor employer during the term of such service contract, and

(2) a customer whose service contract with a certified professional employer organization is terminated with respect to a work site employee shall be treated as a successor employer and the certified professional employer organization shall be treated as a predecessor employer.

(c) Liability of certified professional employer organization

Solely for purposes of its liability for the taxes and other obligations imposed by this subtitle—

(1) a certified professional employer organization shall be treated as the employer of any individual (other than a work site employee or a person described in subsection (f)) who is performing services covered by a contract meeting the requirements of section 7705(e)(2), but only with respect to remuneration remitted by such organization to such individual, and

(2) the exemptions, exclusions, definitions, and other rules which are based on type of employer and which would (but for paragraph (1)) apply shall apply with respect to such taxes imposed on such remuneration.

(d) Treatment of credits

(1) In general

For purposes of any credit specified in paragraph (2)—

(A) such credit with respect to a work site employee performing services for the customer applies to the customer, not the certified professional employer organization,

(B) the customer, and not the certified professional employer organization, shall take into account wages and employment taxes—

(i) paid by the certified professional employer organization with respect to the work site employee, and

(ii) for which the certified professional employer organization receives payment from the customer, and

(C) the certified professional employer organization shall furnish the customer and the Secretary with any information necessary for the customer to claim such credit.

(2) Credits specified

A credit is specified in this paragraph if such credit is allowed under—

(A) section 41 (credit for increasing research activity),

(B) section 45A (Indian employment credit),

(C) section 45B (credit for portion of employer social security taxes paid with respect to employee cash tips),

(D) section 45C (clinical testing expenses for certain drugs for rare diseases or conditions),

(E) section 45R (employee health insurance expenses of small employers),

(F) section 51 (work opportunity credit),

(G) section 1396 (empowerment zone employment credit), and

(H) any other section as provided by the Secretary.

(e) Special rule for related party

This section shall not apply in the case of a customer which bears a relationship to a certified professional employer organization described in section 267(b) or 707(b). For purposes of the preceding sentence, such sections shall be applied by substituting “10 percent” for “50 percent”.

(f) Special rule for certain individuals

For purposes of the taxes imposed under this subtitle, an individual with net earnings from self-employment derived from the customer’s trade or business (including a partner in a partnership that is a customer) is not a work site employee with respect to remuneration paid by a certified professional employer organization.

(g) Reporting requirements and obligations

The Secretary shall develop such reporting and recordkeeping rules, regulations, and procedures as the Secretary determines necessary or appropriate to ensure compliance with this title by certified professional employer organizations or persons that have been so certified. Such rules shall include—

(1) notification of the Secretary in such manner as the Secretary shall prescribe in the case of the commencement or termination of a service contract described in section 7705(e)(2) between such a person and a customer, and the employer identification number of such customer,

(2) such information as the Secretary determines necessary for the customer to claim the credits identified in subsection (d) and the manner in which such information is to be provided, as prescribed by the Secretary, and

(3) such other information as the Secretary determines is essential to promote compliance with respect to the credits identified in subsection (d) and section 3302, and

shall be designed in a manner which streamlines, to the extent possible, the application of requirements of this section and section 7705, the exchange of information between a certified professional employer organization and its customers, and the reporting and recordkeeping obligations of the certified professional employer organization.

(h) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 113-295, div. B, title II, §206(a), Dec. 19, 2014, 128 Stat. 4065.)

EFFECTIVE DATE

Section applicable with respect to wages for services performed on or after January 1 of the first calendar year beginning more than 12 months after Dec. 19, 2014, see section 206(g)(1) of Pub. L. 113-295, set out as an Effective Date of 2014 Amendment note under section 3302 of this title.

§ 3512. Treatment of certain persons as employers with respect to motion picture projects

(a) In general

For purposes of sections 3121(a)(1) and 3306(b)(1), remuneration paid to a motion picture project worker by a motion picture project employer during a calendar year shall be treated as remuneration paid with respect to employment of such worker by such employer during the calendar year. The identity of such employer for such purposes shall be determined as set forth in this section and without regard to the usual common law rules applicable in determining the employer-employee relationship.

(b) Definitions

For purposes of this section—

(1) Motion picture project employer

The term “motion picture project employer” means any person if—

(A) such person (directly or through affiliates)—

(i) is a party to a written contract covering the services of motion picture project workers with respect to motion picture projects in the course of a client’s trade or business,

(ii) is contractually obligated to pay remuneration to the motion picture project workers without regard to payment or reimbursement by any other person,

(iii) controls the payment (within the meaning of section 3401(d)(1)) of remuneration to the motion picture project workers and pays such remuneration from its own account or accounts,

(iv) is a signatory to one or more collective bargaining agreements with a labor organization (as defined in 29 U.S.C. 152(5)) that represents motion picture project workers, and

(v) has treated substantially all motion picture project workers that such person pays as employees and not as independent contractors during such calendar year for purposes of determining employment taxes under this subtitle, and

(B) at least 80 percent of all remuneration (to which section 3121 applies) paid by such person in such calendar year is paid to motion picture project workers.

(2) Motion picture project worker

The term “motion picture project worker” means any individual who provides services on motion picture projects for clients who are not affiliated with the motion picture project employer.

(3) Motion picture project

The term “motion picture project” means the production of any property described in section 168(f)(3). Such term does not include property with respect to which records are required to be maintained under section 2257 of title 18, United States Code.

(4) Affiliate; affiliated

A person shall be treated as an affiliate of, or affiliated with, another person if such per-

sons are treated as a single employer under subsection (b) or (c) of section 414.

(Added Pub. L. 114-113, div. Q, title III, §346(a), Dec. 18, 2015, 129 Stat. 3115.)

REFERENCES IN TEXT

29 U.S.C. 152, referred to in subsec. (b)(1)(A)(iv), is section 2 of the National Labor Relations Act, act July 5, 1935, ch. 372, 49 Stat. 450, which is classified to section 152 of Title 29, Labor.

EFFECTIVE DATE

Pub. L. 114-113, div. Q, title III, §346(c), Dec. 18, 2015, 129 Stat. 3116, provided that: “The amendments made by this section [enacting this section and provisions set out as a note under this section] shall apply to remuneration paid after December 31, 2015.”

CONSTRUCTION

Pub. L. 114-113, div. Q, title III, §346(d), Dec. 18, 2015, 129 Stat. 3116, provided that: “Nothing in the amendments made by this section [enacting this section] shall be construed to create any inference on the law before the date of the enactment of this Act [Dec. 18, 2015].”

Subtitle D—Miscellaneous Excise Taxes

Table with 2 columns: Chapter and Sec.1. Lists chapters 31 through 50 and their corresponding section numbers, including categories like Retail excise taxes, Environmental taxes, and Foreign procurement.

AMENDMENTS

2011—Pub. L. 111-347, title III, §301(a)(2), Jan. 2, 2011, 124 Stat. 3666, added item for chapter 50.

2010—Pub. L. 111-148, title X, §10907(c), Mar. 23, 2010, 124 Stat. 1020, added item for chapter 49.

Pub. L. 111-148, title IX, §9017(b), Mar. 23, 2010, 124 Stat. 872, which directed amendment of analysis by adding item for chapter 49, was not executed in view of Pub. L. 111-148, title X, §10907(a), Mar. 23, 2010, 124 Stat. 1020, which provided that the amendments made by section 9017 of Pub. L. 111-148 were deemed null, void, and of no effect.

Pub. L. 111-148, title I, §1501(c), title VI, §6301(e)(2)(B)(ii), Mar. 23, 2010, 124 Stat. 249, 747, added items for chapters 34 and 48 and struck out former item for chapter 34 “Documentary stamp taxes”.

2004—Pub. L. 108-357, title VIII, §802(c)(2), Oct. 22, 2004, 118 Stat. 1568, added item for chapter 45.

1990—Pub. L. 101-508, title XI, §11801(b)(17), Nov. 5, 1990, 104 Stat. 1388-522, struck out item for chapter 37 “Sugar, coconut and palm oil”.

1 Section numbers editorially supplied.