surance Reauthorization, and Job Creation Act of 2010, Pub. L. 111–312, to which such amendment relates, see section 206(d) of Pub. L. 113–295, set out as a note under section 32 of this title.

EFFECTIVE DATE

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

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

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

Subtitle C—Employment Taxes

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

Editorial Notes

AMENDMENTS

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

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 L. 98–67 repealed amendments made by Pub.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

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 L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub.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

CHAPTER 21—FEDERAL INSURANCE CONTRIBUTIONS ACT

Subchapter		Sec.[1]
A.	Tax on employees	3101
B.	Tax on employers	3111
C.	General provisions	3121
D.	Credits	3131

Editorial Notes

AMENDMENTS

Pub. L. 117–2, title IX, §9641(c), Mar. 11, 2021, 135 Stat. 171, added item for subchapter D.

[1] Section numbers editorially supplied.

[1] Section numbers editorially supplied.

Subchapter A—Tax on Employees

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

§ 3101. Rate of tax

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

In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to 6.2 percent of the wages (as defined in section 3121(a)) received by the individual with respect to employment (as defined in section 3121(b)).

(b) Hospital insurance

(1) In general

In addition to the tax imposed by the preceding subsection, there is hereby imposed on the income of every individual a tax equal to 1.45 percent of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b)).

(2) Additional tax

In addition to the tax imposed by paragraph (1) and the preceding subsection, there is hereby imposed on every taxpayer (other than a corporation, estate, or trust) a tax equal to 0.9 percent of wages which are received with respect to employment (as defined in section 3121(b)) during any taxable year beginning after December 31, 2012, and which are in excess of—

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

(B) in the case of a married taxpayer (as defined in section 7703) filing a separate return, ½ of the dollar amount determined under subparagraph (A), and

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

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

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

(Aug. 16, 1954, ch. 736, 68A Stat. 415; Sept. 1, 1954, ch. 1206, title II, §208(b), 68 Stat. 1094; Aug. 1, 1956, ch. 836, title II, §202(b), 70 Stat. 845; Pub. L. 85–840, title IV, §401(b), Aug. 28, 1958, 72 Stat. 1041; Pub. L. 87–64, title II, §201(b), June 30, 1961, 75 Stat. 141; Pub. L. 89–97, title I, §111(c)(5), title III, §321(b), July 30, 1965, 79 Stat. 342, 395; Pub. L. 90–248, title I, §109(a)(2), (b)(2), Jan. 2, 1968, 81 Stat. 836; Pub. L. 92–5, title II, §204(a)(1), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92–336, §204(a)(2), (b)(2), July 1, 1972, 86 Stat. 421, 422; Pub. L. 92–603, §135(a)(2), (b)(2), Oct. 30, 1972, 86 Stat. 1362, 1363; Pub. L. 93–233, §6(a)(1), (b)(2), Dec. 31, 1973, 87 Stat. 954, 955; Pub. L. 94–455, title XIX, §1903(a)(1), Oct. 4, 1976, 90 Stat. 1806; Pub. L. 95–216, title I, §101(a)(1), (b)(1), title III, §317(b)(2), Dec. 20, 1977, 91 Stat. 1510, 1511, 1540; Pub. L. 98–21, title I, §123(a)(1), Apr. 20, 1983, 97 Stat. 87; Pub. L. 108–203, title IV, §415, Mar. 2,

2004, 118 Stat. 530; Pub. L. 111–148, title IX, § 9015(a)(1), title X, § 10906(a), Mar. 23, 2010, 124 Stat. 870, 1020; Pub. L. 111–152, title I, § 1402(b)(1)(A), Mar. 30, 2010, 124 Stat. 1063; Pub. L. 113–295, div. A, title II, § 221(a)(99)(A), Dec. 19, 2014, 128 Stat. 4051; Pub. L. 115–141, div. U, title IV, § 401(a)(207), Mar. 23, 2018, 132 Stat. 1194.)

Editorial Notes

REFERENCES IN TEXT

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

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–141 inserted period at end.

2014—Subsec. (a). Pub. L. 113–295 substituted ''6.2 percent of the wages (as defined in section 3121(a)) received by the individual with respect to employment (as defined in section 3121(b))'' for ''the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—'' and table of rates.

2010—Subsec. (b). Pub. L. 111–148, § 9015(a)(1), designated existing text as par. (1), inserted heading, substituted ''1.45 percent of the'' for ''the following percentages of the'' and ''(as defined in section 3121(b)).'' for ''(as defined in section 3121(b))—'', struck out former pars. (1) to (6), which related to rates in calendar years 1974 to 1985 and after Dec. 31, 1985, and added par. (2).

Subsec. (b)(2). Pub. L. 111–152, § 1402(b)(1)(A), added subpar. (B) and redesignated former subpar. (B) as (C).

Pub. L. 111–148, § 10906(a), substituted ''0.9 percent'' for ''0.5 percent'' in introductory provisions.

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (b)(4). Pub. L. 93–233, § 6(b)(2), incorporated former provision of par. (3) for taxation of wages received during calendar years 1978, 1979, and 1980, decreased the applicable rate of tax from 1.25 percent to 1.10 percent, and struck out provision for 1.35 percent rate of tax for calendar years 1981, 1982, 1983, 1984, and 1985.

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

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

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

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

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

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

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

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

Subsec. (b)(2) to (5). Pub. L. 92–336, § 204(b)(2), inserted references to 1976 and 1977 and substituted ''0.9'' for ''0.65'' in par. (2), substituted references for the calendar years 1978 through 1985 for references to the calendar years 1976 through 1979 and substituted ''1.0'' for ''0.70'' in par. (3), substituted references for the cal-

endar years 1986 through 1992 for references to the calendar years 1980 through 1986 and substituted ''1.1'' for ''0.80'' in par. (4), and substituted ''1992'' for ''1986'' and ''1.2'' for ''0.90'' in par. (5).

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

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

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

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

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

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

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

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

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

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

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

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

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

Statutory Notes and Related Subsidiaries

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 OF 2010 AMENDMENT

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

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

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

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–21, title I, §123(a)(3), Apr. 20, 1983, 97 Stat. 88, provided that: ''The amendments made by this subsection [amending this section and section 3111 of this title] shall apply to remuneration paid after December 31, 1983.''

EFFECTIVE DATE OF 1977 AMENDMENT

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

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XIX, §1903(d), Oct. 4, 1976, 90 Stat. 1810, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [see Tables for classification of section 1903 of Pub. L. 94–455] shall apply with respect to wages paid after December 31, 1976, except that the amendments made to chapter 22 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 3201 et seq. of this title] shall apply with respect to compensation paid for services rendered after December 31, 1976.''

EFFECTIVE DATE OF 1973 AMENDMENT

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

EFFECTIVE DATE OF 1972 AMENDMENTS

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

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

EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92–5, title II, § 204(b), Mar. 17, 1971, 85 Stat. 12, provided that: ''The amendments made by subsection (a)(1) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1971. The remaining amendments made by this section [amending section 3111 of this title] shall apply only with respect to remuneration paid after December 31, 1971.''

EFFECTIVE DATE OF 1968 AMENDMENT

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

EFFECTIVE DATE OF 1965 AMENDMENT

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

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

EFFECTIVE DATE OF 1961 AMENDMENT

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

EFFECTIVE DATE OF 1958 AMENDMENT

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

EFFECTIVE DATE OF 1956 AMENDMENT

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

TEMPORARY EMPLOYEE PAYROLL TAX CUT

Notwithstanding any other provision of law, with respect to remuneration received during calendar years 2011 and 2012, the rate of tax under 26 U.S.C. 3101(a) to be 4.2 percent, see section 601 of Pub. L. 111–312, set out as a note under section 1401 of this title.

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

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

REFERENCES TO SOCIAL SECURITY ACT

Act Sept. 1, 1954, ch. 1206, title IV, § 402, 68 Stat. 1098, as amended by act Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095, provided that: ''References in the Internal Revenue Code of 1939 [former Title 26, Internal Revenue Code], the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the Railroad Retirement Act of 1937, as amended [section 231 et seq. of Title 45, Railroads], or any other law of the United States to any section or subdivision of a section of the Social Security Act [section 301 et seq. of Title 42, The Public Health and Welfare] redesignated by this Act shall be deemed to refer to such section or subdivision of a section as so redesignated.''

§ 3102. Deduction of tax from wages

(a) Requirement

The tax imposed by section 3101 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. An employer who in any calendar year pays to an employee cash remuneration to which paragraph (7)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than the applicable dollar threshold (as defined in section 3121(x)) for such year; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (7)(C) or (10) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than $100; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (8)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than $150; and an employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (12)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax with respect to such tips from any wages of the employee (exclusive of tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than $20.

(b) Indemnification of employer

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

(c) Special rule for tips

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

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

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

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

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

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

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

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

(1) In general

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

(A) subsection (a) shall not apply,

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

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

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

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

(2) Benefits to which subsection applies

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

(A) such payment constitutes wages, and

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

(e) Special rule for certain transferred Federal employees

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

(1) subsection (a) shall not apply,

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

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

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

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

(f) Special rules for additional tax

(1) In general

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

(2) Collection of amounts not withheld

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

(3) Tax paid by recipient

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

(Aug. 16, 1954, ch. 736, 68A Stat. 415; Sept. 1, 1954, ch. 1206, title II, § 205A, 68 Stat. 1093; Aug. 1, 1956, ch. 836, title II, § 201(h)(3), 70 Stat. 841; Pub. L. 89–97, title III, § 313(c)(1), (2), July 30, 1965, 79 Stat. 382, 383; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–216, title III, § 355(a), (b), Dec. 20, 1977, 91 Stat. 1555; Pub. L. 101–508, title V, § 5124(a), Nov. 5, 1990, 104 Stat. 1388–284; Pub. L. 103–296, title III, § 319(a)(3), Aug. 15, 1994, 108 Stat. 1534; Pub. L. 103–387, § 2(a)(1)(D), Oct. 22, 1994, 108 Stat. 4072; Pub. L. 108–203, title IV, § 424(b), Mar. 2, 2004, 118 Stat. 536; Pub. L. 111–148, title IX, § 9015(a)(2), Mar. 23, 2010, 124 Stat. 871.)

Editorial Notes

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–148 added subsec. (f).

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

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

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

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

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

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

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

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

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

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

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

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

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENTS

Pub. L. 103–387, § 2(a)(3), Oct. 22, 1994, 108 Stat. 4072, provided that:

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

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

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

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title V, § 5124(c), Nov. 5, 1990, 104 Stat. 1388–285, provided that: ''The amendments made by this section [amending this section and section 3202 of this title] shall apply to coverage provided after December 31, 1990.''

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–216, title III, § 355(c), Dec. 20, 1977, 91 Stat. 1555, provided that: ''The amendments made by this section [amending this section] shall apply with respect to remuneration paid and to tips received after December 31, 1977.''

EFFECTIVE DATE OF 1965 AMENDMENT

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

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

Pub. L. 103–387, § 2(a)(4), Oct. 22, 1994, 108 Stat. 4072, provided that: ''Notwithstanding the amendments made by this subsection [amending this section, section 3121 of this title, and sections 409 and 410 of Title 42, The Public Health and Welfare], if the wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) paid during 1994 to an employee for domestic service in a private home of the employer are less than $1,000—

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

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

Subchapter B—Tax on Employers

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

Editorial Notes

AMENDMENTS

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

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

§ 3111. Rate of tax

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

In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 6.2 percent of the wages (as defined in section 3121(a)) paid by the employer with respect to employment (as defined in section 3121(b)).

(b) Hospital insurance

In addition to the tax imposed by the preceding subsection, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 1.45

percent of the wages (as defined in section 3121(a)) paid by the employer with respect to employment (as defined in section 3121(b)).

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

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

[(d) Repealed. Pub. L. 115–141, div. U, title IV, § 401(b)(34), Mar. 23, 2018, 132 Stat. 1204]

(e) Credit for employment of qualified veterans

(1) In general

If a qualified tax-exempt organization hires a qualified veteran with respect to whom a credit would be allowable under section 38 by reason of section 51 if the organization were not a qualified tax-exempt organization, then there shall be allowed as a credit against the tax imposed by subsection (a) on wages paid with respect to employment of all employees of the organization during the applicable period an amount equal to the credit determined under section 51 (after application of the modifications under paragraph (3)) with respect to wages paid to such qualified veteran during such period.

(2) Overall limitation

The aggregate amount allowed as a credit under this subsection for all qualified veterans for any period with respect to which tax is imposed under subsection (a) shall not exceed the amount of the tax imposed by subsection (a) on wages paid with respect to employment of all employees of the organization during such period.

(3) Modifications

For purposes of paragraph (1), section 51 shall be applied—

(A) by substituting ''26 percent'' for ''40 percent'' in subsection (a) thereof,

(B) by substituting ''16.25 percent'' for ''25 percent'' in subsection (i)(3)(A) thereof, and

(C) by only taking into account wages paid to a qualified veteran for services in furtherance of the activities related to the purpose or function constituting the basis of the organization's exemption under section 501.

(4) Applicable period

The term ''applicable period'' means, with respect to any qualified veteran, the 1-year period beginning with the day such qualified veteran begins work for the organization.

(5) Definitions

For purposes of this subsection—

(A) the term ''qualified tax-exempt organization'' means an employer that is an organization described in section 501(c) and exempt from taxation under section 501(a), and

(B) the term ''qualified veteran'' has the meaning given such term by section 51(d)(3).

(f) Credit for research expenditures of qualified small businesses

(1) In general

In the case of a taxpayer who has made an election under section 41(h) for a taxable year, there shall be allowed as a credit against the tax imposed by subsection (a) for the first calendar quarter which begins after the date on which the taxpayer files the return specified in section 41(h)(4)(A)(ii) an amount equal to the payroll tax credit portion determined under section 41(h)(2).

(2) Limitation

The credit allowed by paragraph (1) shall not exceed the tax imposed by subsection (a) for any calendar quarter on the wages paid with respect to the employment of all individuals in the employ of the employer.

(3) Carryover of unused credit

If the amount of the credit under paragraph (1) exceeds the limitation of paragraph (2) for any calendar quarter, such excess shall be carried to the succeeding calendar quarter and allowed as a credit under paragraph (1) for such quarter.

(4) Deduction allowed for credited amounts

The credit allowed under paragraph (1) shall not be taken into account for purposes of determining the amount of any deduction allowed under chapter 1 for taxes imposed under subsection (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 416; Sept. 1, 1954, ch. 1206, title II, § 208(c), 68 Stat. 1094; Aug. 1, 1956. ch. 836, title II, § 202(c), 70 Stat. 845; Pub. L. 85–840, title IV, § 401(c), Aug. 28, 1958, 72 Stat. 1042; Pub. L. 87–64, title II, § 201(c), June 30, 1961, 75 Stat. 141; Pub. L. 89–97, title I, § 111(c)(6), title III, § 321(c), July 30, 1965, 79 Stat. 343, 396; Pub. L. 90–248, title I, § 109(a)(3), (b)(3), Jan. 2, 1968, 81 Stat. 836, 837; Pub. L. 92–5, title II, § 204(a)(2), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92–336, title II, § 204(a)(3), (b)(3), July 1, 1972, 86 Stat. 421, 422; Pub. L. 92–603, title I, § 135(a)(3), (b)(3), Oct. 30, 1972, 86 Stat. 1363, 1364; Pub. L. 93–233, § 6(a)(2), (b)(3), Dec. 31, 1973, 87 Stat. 954, 955; Pub. L. 94–455, title XIX, § 1903(a)(1), Oct. 4, 1976, 90 Stat. 1806; Pub. L. 95–216, title I, § 101(a)(2), (b)(2), title III, §§ 315(b), 317(b)(2), Dec. 20, 1977, 91 Stat. 1511, 1512, 1537, 1540; Pub. L. 98–21, title I, § 123(a)(2), Apr. 20, 1983, 97 Stat. 88; Pub. L. 100–203, title IX, § 9006(b)(1), Dec. 22, 1987, 101 Stat. 1330–289; Pub. L. 100–647, title VIII, § 8016(a)(5), Nov. 10, 1988, 102 Stat. 3793; Pub. L. 108–203, title IV, § 415, Mar. 2, 2004, 118 Stat. 530; Pub. L. 111–147, title I, § 101(a), Mar. 18, 2010, 124 Stat. 72; Pub. L. 112–56, title II, § 261(e)(2), Nov. 21, 2011, 125 Stat. 730; Pub. L. 113–295, div. A, title II, § 221(a)(99)(B), Dec. 19, 2014, 128 Stat. 4051; Pub. L. 114–113, div. Q, title I, § 121(c)(2), Dec. 18, 2015, 129 Stat. 3051; Pub. L. 115–141, div. U, title IV, § 401(a)(208), (b)(34), Mar. 23, 2018, 132 Stat. 1194, 1204.)

Editorial Notes

REFERENCES IN TEXT

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

AMENDMENTS

2018—Subsec. (d). Pub. L. 115–141, § 401(b)(34), struck out subsec. (d) which provided for a special exemption for certain individuals hired in 2010.

Subsec. (e)(5)(B). Pub. L. 115–141, § 401(a)(208), substituted ''has the meaning'' for ''has meaning''.

2015—Subsec. (f). Pub. L. 114–113 added subsec. (f).

2014—Subsec. (a). Pub. L. 113–295, § 221(a)(99)(B)(i), substituted ''6.2 percent of the wages (as defined in section 3121(a)) paid by the employer with respect to employment (as defined in section 3121(b)).'' for ''the following percentages of the wages (as defined in section 3121(a)) paid by him with respect to employment (as defined in section 3121(b))—'' and table of rates.

Subsec. (b). Pub. L. 113–295, § 221(a)(99)(B)(ii), substituted ''1.45 percent of the wages (as defined in section 3121(a)) paid by the employer with respect to employment (as defined in section 3121(b)).'' for ''the following percentages of the wages (as defined in section 3121(a)) paid by him with respect to employment (as defined in section 3121(b))—

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

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

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

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

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

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

2011—Subsec. (e). Pub. L. 112–56 added subsec. (e).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–113 applicable to taxable years beginning after Dec. 31, 2015, see section 121(d)(3) of Pub. L. 114–113, set out as a note under section 38 of this title.

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 OF 2011 AMENDMENT

Amendment by Pub. L. 112–56 applicable to individuals who begin work for the employer after Nov. 21, 2011, see section 261(g) of Pub. L. 112–56, set out as a note under section 51 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VIII, § 8016(b), Nov. 10, 1988, 102 Stat. 3793, provided that:

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

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

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IX, § 9006(c), Dec. 22, 1987, 101 Stat. 1330–289, provided that: ''The amendments made by this section [amending this section and section 3121 of this title] shall apply with respect to tips received (and wages paid) on and after January 1, 1988.''

EFFECTIVE DATE OF 1983 AMENDMENT

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

EFFECTIVE DATE OF 1977 AMENDMENT

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

Pub. L. 95–216, title III, § 315(c), Dec. 20, 1977, 91 Stat. 1537, provided that: ''The amendments made by this section [amending this section and section 3121 of this title] shall apply with respect to wages paid with respect to employment performed in months after December 1977.''

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1973 AMENDMENT

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

EFFECTIVE DATE OF 1972 AMENDMENTS

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

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

EFFECTIVE DATE OF 1971 AMENDMENT

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

EFFECTIVE DATE OF 1968 AMENDMENT

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

EFFECTIVE DATE OF 1965 AMENDMENT

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

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

EFFECTIVE DATE OF 1961 AMENDMENT

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

EFFECTIVE DATE OF 1958 AMENDMENT

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

EFFECTIVE DATE OF 1956 AMENDMENT

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

SAVINGS PROVISION

For provisions that nothing in amendment by section 401(b)(34) of Pub. L. 115–141 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Mar. 23, 2018, for purposes of determining liability for tax for periods ending after Mar. 23, 2018, see section 401(e) of Pub. L. 115–141, set out as a note under section 23 of this title.

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

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

EMPLOYEE RETENTION CREDIT FOR EMPLOYERS SUBJECT TO CLOSURE DUE TO COVID–19

Pub. L. 116–136, div. A, title II, § 2301, Mar. 27, 2020, 134 Stat. 347, as amended by Pub. L. 116–260, div. EE, title II, §§ 206(a), (b), (c)(2), (d), 207(a)–(j), title III, § 303(d)(3)(C)(iii), Dec. 27, 2020, 134 Stat. 3059–3065, 3077, provided that:

''(a) IN GENERAL.—In the case of an eligible employer, there shall be allowed as a credit against applicable employment taxes for each calendar quarter an amount equal to 70 percent of the qualified wages with respect to each employee of such employer for such calendar quarter.

''(b) LIMITATIONS AND REFUNDABILITY.—

''(1) WAGES TAKEN INTO ACCOUNT.—The amount of qualified wages with respect to any employee which may be taken into account under subsection (a) by the eligible employer for any calendar quarter shall not exceed $10,000.

''(2) CREDIT LIMITED TO EMPLOYMENT TAXES.—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the applicable employment taxes (reduced by any credits allowed under subsections (e) and (f) of section 3111 of the Internal Revenue Code of 1986, sections 7001 and 7003 of the Families First Coronavirus Response Act [Pub. L. 116–127, set out as notes below], and section 303(d) of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 [div. EE of Pub. L. 116–260, 134 Stat. 3076, in part amending this note and provisions set out as notes under this section; see Tables for classification]) on the wages paid with respect to the employment of all the employees of the eligible employer for such calendar quarter.

''(3) REFUNDABILITY OF EXCESS CREDIT.—

''(A) IN GENERAL.—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (2) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b) of the Internal Revenue Code of 1986.

''(B) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, any

amounts due to the employer under this paragraph shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

''(c) DEFINITIONS.—For purposes of this section—

''(1) APPLICABLE EMPLOYMENT TAXES.—The term 'applicable employment taxes' means the following:

''(A) The taxes imposed under section 3111(a) of the Internal Revenue Code of 1986.

''(B) So much of the taxes imposed under section 3221(a) of such Code as are attributable to the rate in effect under section 3111(a) of such Code.

''(2) ELIGIBLE EMPLOYER.—

''(A) IN GENERAL.—The term 'eligible employer' means any employer—

''(i) which was carrying on a trade or business during the calendar quarter for which the credit is determined under subsection (a), and

''(ii) with respect to any calendar quarter, for which—

''(I) the operation of the trade or business described in clause (i) is fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to the coronavirus disease 2019 (COVID–19), or

''(II) the gross receipts (within the meaning of section 448(c) of the Internal Revenue Code of 1986) of such employer for such calendar quarter are less than 80 percent of the gross receipts of such employer for the same calendar quarter in calendar year 2019.

With respect to any employer for any calendar quarter, if such employer was not in existence as of the beginning of the same calendar quarter in calendar year 2019, clause (ii)(II) shall be applied by substituting ''2020'' for ''2019''.

''(B) ELECTION TO USE ALTERNATIVE QUARTER.—At the election of the employer—

''(i) subparagraph (A)(ii)(II) shall be applied—

''(I) by substituting 'for the immediately preceding calendar quarter' for 'for such calendar quarter', and

''(II) by substituting 'the corresponding calendar quarter in calendar year 2019' for 'the same calendar quarter in calendar year 2019', and

''(ii) the last sentence of subparagraph (A) shall be applied by substituting 'the corresponding calendar quarter in calendar year 2019' for 'the same calendar quarter in calendar year 2019'.

An election under this subparagraph shall be made at such time and in such manner as the Secretary shall prescribe.

''(C) TAX-EXEMPT ORGANIZATIONS.—In the case of an organization which is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code—

''(i) clauses (i) and (ii)(I) of subparagraph (A) shall apply to all operations of such organization, and

''(ii) any reference in this section to gross receipts shall be treated as a reference to gross receipts within the meaning of section 6033 of such Code.

''(3) QUALIFIED WAGES.—

''(A) IN GENERAL.—The term 'qualified wages' means—

''(i) in the case of an eligible employer for which the average number of full-time employees (within the meaning of section 4980H of the Internal Revenue Code of 1986) employed by such eligible employer during 2019 was greater than 500, wages paid by such eligible employer with respect to which an employee is not providing services due to circumstances described in subclause (I) or (II) of paragraph (2)(A)(ii), or

''(ii) in the case of an eligible employer for which the average number of full-time employees (within the meaning of section 4980H of the Internal Revenue Code of 1986) employed by such eligible employer during 2019 was not greater than 500—

''(I) with respect to an eligible employer described in subclause (I) of paragraph (2)(A)(ii), wages paid by such eligible employer with respect to an employee during any period described in such clause, or

''(II) with respect to an eligible employer described in subclause (II) of such paragraph, wages paid by such eligible employer with respect to an employee during such quarter.

''(B) EXCEPTION.—The term 'qualified wages' shall not include any wages taken into account under section 7001 or section 7003 of the Families First Coronavirus Response Act.

''(4) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or the Secretary's delegate.

''(5) WAGES.—

''(A) IN GENERAL.—The term 'wages' means wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) and compensation (as defined in section 3231(e) of such Code). For purposes of the preceding sentence, in the case of any organization or entity described in subsection (f)(2), wages as defined in section 3121(a) of the Internal Revenue Code of 1986 shall be determined without regard to paragraphs (5), (6), (7), (10), and (13) of section 3121(b) of such Code (except with respect to services performed in a penal institution by an inmate thereof).

''(B) ALLOWANCE FOR CERTAIN HEALTH PLAN EXPENSES.—

''(i) IN GENERAL.—Such term shall include amounts paid by the eligible employer to provide and maintain a group health plan (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a) of such Code.

''(ii) ALLOCATION RULES.—For purposes of this section, amounts treated as wages under clause (i) shall be treated as paid with respect to any employee (and with respect to any period) to the extent that such amounts are properly allocable to such employee (and to such period) in such manner as the Secretary may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among periods of coverage.

''(6) OTHER TERMS.—Any term used in this section which is also used in chapter 21 or 22 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such chapter.

''(d) AGGREGATION RULE.—All persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986, or subsection (m) or (*o*) of section 414 of such Code, shall be treated as one employer for purposes of this section.

''(e) CERTAIN RULES TO APPLY.—For purposes of this section, rules similar to the rules of sections 51(i)(1) and 280C(a) of the Internal Revenue Code of 1986 shall apply.

''(f) CERTAIN GOVERNMENTAL EMPLOYERS.—

''(1) IN GENERAL.—This credit shall not apply to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing.

''(2) EXCEPTION.—Paragraph (1) shall not apply to—

''(A) any organization described in section 501(c)(1) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, or

''(B) any entity described in paragraph (1) if —

''(i) such entity is a college or university, or

''(ii) the principal purpose or function of such entity is providing medical or hospital care.

In the case of any entity described in subparagraph (B), such entity shall be treated as satisfying the requirements of subsection (c)(2)(A)(i).

''(g) ELECTION TO NOT TAKE CERTAIN WAGES INTO ACCOUNT.—

''(1) IN GENERAL.—This section shall not apply to so much of the qualified wages paid by an eligible employer as such employer elects (at such time and in such manner as the Secretary may prescribe) to not take into account for purposes of this section.

''(2) COORDINATION WITH PAYCHECK PROTECTION PROGRAM.—The Secretary, in consultation with the Administrator of the Small Business Administration, shall issue guidance providing that payroll costs paid during the covered period shall not fail to be treated as qualified wages under this section by reason of an election under paragraph (1) to the extent that a covered loan of the eligible employer is not forgiven by reason of a decision under section 7A(g) of the Small Business Act [15 U.S.C. 636m(g)] or the application of section 7(a)(37)(J) of the Small Business Act [15 U.S.C. 636(a)(37)(J)]. Terms used in the preceding sentence which are also used in section 7A(g) or 7(a)(37)(J) of the Small Business Act shall, when applied in connection with either such section, have the same meaning as when used in such section, respectively.

''(h) SPECIAL RULES.—

''(1) DENIAL OF DOUBLE BENEFIT.—Any wages taken into account in determining the credit allowed under this section shall not be taken into account as wages for purposes of sections 41, 45A, 45P, 45S, 51, and 1396 of the Internal Revenue Code of 1986.

''(2) THIRD PARTY PAYORS.—Any credit allowed under this section shall be treated as a credit described in section 3511(d)(2) of such Code.

''(i) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 14 [sic] 231n–1(a)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard to this subsection). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.

''(j) ADVANCE PAYMENTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no advance payment of the credit under subsection (a) shall be allowed.

''(2) ADVANCE PAYMENTS TO SMALL EMPLOYERS.—

''(A) IN GENERAL.—Under rules provided by the Secretary, an eligible employer for which the average number of full-time employees (within the meaning of section 4980H of the Internal Revenue Code of 1986) employed by such eligible employer during 2019 was not greater than 500 may elect for any calendar quarter to receive an advance payment of the credit under subsection (a) for such quarter in an amount not to exceed 70 percent of the average quarterly wages paid by the employer in calendar year 2019.

''(B) SPECIAL RULE FOR SEASONAL EMPLOYERS.—In the case of any employer who employs seasonal workers (as defined in section 45R(d)(5)(B) of the Internal Revenue Code of 1986), the employer may elect to substitute 'the wages for the calendar quarter in 2019 which corresponds to the calendar quarter to which the election relates' for 'the average quarterly wages paid by the employer in calendar year 2019'.

''(C) SPECIAL RULE FOR EMPLOYERS NOT IN EXISTENCE IN 2019.—In the case of any employer that was not in existence in 2019, subparagraphs (A) and (B) shall each be applied by substituting '2020' for '2019' each place it appears.

''(3) RECONCILIATION OF CREDIT WITH ADVANCE PAYMENTS.—

''(A) IN GENERAL.—The amount of credit which would (but for this subsection) be allowed under this section shall be reduced (but not below zero) by the aggregate payment allowed to the taxpayer under paragraph (2). Any failure to so reduce the credit shall be treated as arising out of a mathematical or clerical error and assessed according to section 6213(b)(1) of the Internal Revenue Code of 1986.

''(B) EXCESS ADVANCE PAYMENTS.—If the advance payments to a taxpayer under paragraph (2) for a calendar quarter exceed the credit allowed by this section (determined without regard to subparagraph (A)), the tax imposed by chapter 21 or 22 of the Internal Revenue Code of 1986 (whichever is applicable) for the calendar quarter shall be increased by the amount of such excess.

''(k) TREATMENT OF DEPOSITS.—The Secretary shall waive any penalty under section 6656 of the Internal Revenue Code of 1986 for any failure to make a deposit of any applicable employment taxes if the Secretary determines that such failure was due to the reasonable anticipation of the credit allowed under this section.

''(*l*) REGULATIONS AND GUIDANCE.—The Secretary shall issue such forms, instructions, regulations, and guidance as are necessary—

''(1) to allow the advance payment of the credit under subsection (a) as provided in subsection (j)(2), subject to the limitations provided in this section, based on such information as the Secretary shall require,

''(2) with respect to the application of the credit under subsection (a) to third party payors (including professional employer organizations, certified professional employer organizations, or agents under section 3504 of the Internal Revenue Code of 1986), including regulations or guidance allowing such payors to submit documentation necessary to substantiate the eligible employer status of employers that use such payors, and

''(3) to prevent the avoidance of the purposes of the limitations under this section, including through the leaseback of employees.

Any forms, instructions, regulations, or guidance described in paragraph (2) shall require the customer to be responsible for the accounting of the credit and for any liability for improperly claimed credits and shall require the certified professional employer organization or other third party payor to accurately report such tax credits based on the information provided by the customer.

''(m) APPLICATION.—This section shall only apply to wages paid after March 12, 2020, and before July 1, 2021.

''(n) PUBLIC AWARENESS CAMPAIGN.—

''(1) IN GENERAL.—The Secretary shall conduct a public awareness campaign, in coordination with the Administrator of the Small Business Administration, to provide information regarding the availability of the credit allowed under this section.

''(2) OUTREACH.—Under the campaign conducted under paragraph (1), the Secretary shall—

''(A) provide to all employers which reported not more than 500 employees on the most recently filed return of applicable employment taxes a notice about the credit allowed under this section and the requirements for eligibility to claim the credit, and

''(B) not later than 30 days after the date of the enactment of this subsection, provide to all employers educational materials relating to the credit allowed under this section, including specific materials for businesses with not more than 500 employees.''

[Pub. L. 116–260, div. EE, title II, § 206(e), Dec. 27, 2020, 134 Stat. 3061, provided that:

[''(1) IN GENERAL.—The amendments made by this section [amending section 2301 of Pub. L. 116–136, set out

above] shall take effect as if included in the provisions of the CARES Act [Pub. L. 116–136] to which they relate.

[''(2) SPECIAL RULE.—

[''(A) IN GENERAL.—For purposes of section 2301 of the CARES Act, an employer who has filed a return of tax with respect to applicable employment taxes (as defined in section 2301(c)(1) of division A of such Act) before the date of the enactment of this Act [Dec. 27, 2020] may elect (in such manner as the Secretary of the Treasury (or the Secretary's delegate) shall prescribe) to treat any applicable amount as an amount paid in the calendar quarter which includes the date of the enactment of this Act.

[''(B) APPLICABLE AMOUNT.—For purposes of subparagraph (A), the term 'applicable amount' means the amount of wages which—

[''(i) are—

[''(I) described in section 2301(c)(5)(B) of the CARES Act, as added by the amendments made by subsection (b), or

[''(II) permitted to be treated as qualified wages under guidance issued pursuant to section 2301(g)(2) of the CARES Act (as added by subsection (c)), and

[''(ii) were—

[''(I) paid in a calendar quarter beginning after December 31, 2019, and before October 1, 2020, and

[''(II) not taken into account by the taxpayer in calculating the credit allowed under section 2301(a) of division A of such Act for such calendar quarter.'']

[Pub. L. 116–260, div. EE, title II, § 207(k), Dec. 27, 2020, 134 Stat. 3065, provided that: ''The amendments made by this section [amending section 2301 of Pub. L. 116–136, set out above] shall apply to calendar quarters beginning after December 31, 2020.'']

DELAY OF PAYMENT OF EMPLOYER PAYROLL TAXES

Pub. L. 116–136, div. A, title II, § 2302, Mar. 27, 2020, 134 Stat. 351, as amended by Pub. L. 116–142, § 4(a), June 5, 2020, 134 Stat. 643, provided that:

''(a) IN GENERAL.—

''(1) TAXES.—Notwithstanding any other provision of law, the payment for applicable employment taxes for the payroll tax deferral period shall not be due before the applicable date.

''(2) DEPOSITS.—Notwithstanding section 6302 of the Internal Revenue Code of 1986, an employer shall be treated as having timely made all deposits of applicable employment taxes that are required to be made (without regard to this section) for such taxes during the payroll tax deferral period if all such deposits are made not later than the applicable date.

''(b) SECA.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, the payment for 50 percent of the taxes imposed under section 1401(a) of the Internal Revenue Code of 1986 for the payroll tax deferral period shall not be due before the applicable date.

''(2) ESTIMATED TAXES.—For purposes of applying section 6654 of the Internal Revenue Code of 1986 to any taxable year which includes any part of the payroll tax deferral period, 50 percent of the taxes imposed under section 1401(a) of such Code for the payroll tax deferral period shall not be treated as taxes to which such section 6654 applies.

''(c) LIABILITY OF THIRD PARTIES.—

''(1) ACTS TO BE PERFORMED BY AGENTS.—For purposes of section 3504 of the Internal Revenue Code of 1986, in the case of any person designated pursuant to such section (and any regulations or other guidance issued by the Secretary with respect to such section) to perform acts otherwise required to be performed by an employer under such Code, if such employer directs such person to defer payment of any applicable employment taxes during the payroll tax deferral period under this section, such employer shall be solely liable for the payment of such applicable employment taxes before the applicable date for any wages paid by such person on behalf of such employer during such period.

''(2) CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.—For purposes of section 3511, in the case of a certified professional employer organization (as defined in subsection (a) of section 7705 of the Internal Revenue Code of 1986) that has entered into a service contract described in subsection (e)(2) of such section with a customer, if such customer directs such organization to defer payment of any applicable employment taxes during the payroll tax deferral period under this section, such customer shall, notwithstanding subsections (a) and (c) of section 3511, be solely liable for the payment of such applicable employment taxes before the applicable date for any wages paid by such organization to any work site employee performing services for such customer during such period.

''(d) DEFINITIONS.—For purposes of this section—

''(1) APPLICABLE EMPLOYMENT TAXES.—The term 'applicable employment taxes' means the following:

''(A) The taxes imposed under section 3111(a) of the Internal Revenue Code of 1986.

''(B) So much of the taxes imposed under section 3211(a) of such Code as are attributable to the rate in effect under section 3111(a) of such Code.

''(C) So much of the taxes imposed under section 3221(a) of such Code as are attributable to the rate in effect under section 3111(a) of such Code.

''(2) PAYROLL TAX DEFERRAL PERIOD.—The term 'payroll tax deferral period' means the period beginning on the date of the enactment of this Act [Mar. 27, 2020] and ending before January 1, 2021.

''(3) APPLICABLE DATE.—The term 'applicable date' means—

''(A) December 31, 2021, with respect to 50 percent of the amounts to which subsection (a) or (b), as the case may be, apply, and

''(B) December 31, 2022, with respect to the remaining such amounts.

''(4) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury (or the Secretary's delegate).

''(e) TRUST FUNDS HELD HARMLESS.—There are hereby appropriated (out of any money in the Treasury not otherwise appropriated) for each fiscal year to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(a)) an amount equal to the reduction in the transfers to such fund for such fiscal year by reason of this section. Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund had such amendments not been enacted.

''(f) REGULATORY AUTHORITY.—The Secretary shall issue such regulations or other guidance as necessary to carry out the purposes of this section, including rules for the administration and enforcement of subsection (c).''

[Pub. L. 116–142, § 4(b), June 5, 2020, 134 Stat. 643, provided that: ''The amendments made by this section [amending section 2302 of Pub. L. 116–136, set out above] shall be effective as if included in the CARES Act (Public Law 116–136) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) or section 1109 of the CARES Act [15 U.S.C. 9008].'']

PAYROLL CREDIT FOR REQUIRED PAID SICK LEAVE

Pub. L. 116–127, div. G, § 7001, Mar. 18, 2020, 134 Stat. 210, as amended by Pub. L. 116–136, div. A, title III, § 3606(a), Mar. 27, 2020, 134 Stat. 411; Pub. L. 116–260, div. N, title II, §§ 286(a), (b)(1), 288(a)–(c), div. EE, title III, § 303(d)(3)(C)(i), Dec. 27, 2020, 134 Stat. 1989, 1990, 1992, 3076, provided that:

''(a) IN GENERAL.—In the case of an employer, there shall be allowed as a credit against the tax imposed by section 3111(a) or 3221(a) of the Internal Revenue Code of 1986 for each calendar quarter an amount equal to 100 percent of the qualified sick leave wages paid by such employer with respect to such calendar quarter.

''(b) LIMITATIONS AND REFUNDABILITY.—

''(1) WAGES TAKEN INTO ACCOUNT.—The amount of qualified sick leave wages taken into account under subsection (a) with respect to any individual shall not exceed $200 ($511 in the case of any day any portion of which is paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act [div. E of Pub. L. 116–127, 29 U.S.C. 2601 note]) for any day (or portion thereof) for which the individual is paid qualified sick leave wages.

''(2) OVERALL LIMITATION ON NUMBER OF DAYS TAKEN INTO ACCOUNT.—The aggregate number of days taken into account under paragraph (1) for any calendar quarter shall not exceed the excess (if any) of—

''(A) 10, over

''(B) the aggregate number of days so taken into account for all preceding calendar quarters.

''(3) CREDIT LIMITED TO CERTAIN EMPLOYMENT TAXES.—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the tax imposed by section 3111(a) or 3221(a) of such Code for such calendar quarter (reduced by any credits allowed under subsections (e) and (f) of section 3111 of such Code, and section 303(d) of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 [div. EE of Pub. L. 116–260, 134 Stat. 3076, in part amending this note and provisions set out as notes under this section; see Tables for classification], for such quarter) on the wages paid with respect to the employment of all employees of the employer.

''(4) REFUNDABILITY OF EXCESS CREDIT.—

''(A)(i) CREDIT IS REFUNDABLE.—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (3) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b) of such Code.

''(ii) ADVANCING CREDIT.—In anticipation of the credit, including the refundable portion under clause (i), the credit may be advanced, according to forms and instructions provided by the Secretary, up to an amount calculated under subsection (a), subject to the limits under subsection (b), both calculated through the end of the most recent payroll period in the quarter.

''(B) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, any amounts due to an employer under this paragraph shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

''(c) QUALIFIED SICK LEAVE WAGES.—For purposes of this section, the term 'qualified sick leave wages' means wages (as defined in section 3121(a) of the Internal Revenue Code of 1986, determined without regard to paragraphs (1) through (22) of section 3121(b) of such Code and section 7005(a) of this Act [set out below],) [sic] and compensation (as defined in section 3231(e) of the Internal Revenue Code [of 1986], determined without regard to the sentence in paragraph (1) thereof which begins 'Such term does not include remuneration' and without regard to section 7005(a) of this Act) paid by an employer—

''(1) which are required to be paid by reason of the Emergency Paid Sick Leave Act [div. E (§ 5101 et seq.) of Pub. L. 116–127, 29 U.S.C. 2601 note], or

''(2) both—

''(A) which would be so required to be paid if such Act were applied—

''(i) by substituting 'March 31, 2021' for 'December 31, 2020' in section 5109 thereof, and

''(ii) without regard to section 5102(b)(3) thereof, and

''(B) with respect to which all requirements of such Act (other than subsections (a) and (b) of section 5105 thereof, and determined by substituting 'To be compliant with section 5102, an employer may not' for 'It shall be unlawful for any employer to' in section 5104 thereof) which would apply if so required are satisfied.

''(d) ALLOWANCE OF CREDIT FOR CERTAIN HEALTH PLAN EXPENSES.—

''(1) IN GENERAL.—The amount of the credit allowed under subsection (a) shall be increased by so much of the employer's qualified health plan expenses as are properly allocable to the qualified sick leave wages for which such credit is so allowed.

''(2) QUALIFIED HEALTH PLAN EXPENSES.—For purposes of this subsection, the term 'qualified health plan expenses' means amounts paid or incurred by the employer to provide and maintain a group health plan (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a) of such Code.

''(3) ALLOCATION RULES.—For purposes of this section, qualified health plan expenses shall be allocated to qualified sick leave wages in such manner as the Secretary of the Treasury (or the Secretary's delegate) may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

''(e) SPECIAL RULES.—

''(1) DENIAL OF DOUBLE BENEFIT.—For purposes of chapter 1 of such Code, the gross income of the employer, for the taxable year which includes the last day of any calendar quarter with respect to which a credit is allowed under this section, shall be increased by the amount of such credit. Any wages taken into account in determining the credit allowed under this section shall not be taken into account for purposes of determining the credit allowed under section 45S of such Code.

''(2) ELECTION NOT TO HAVE SECTION APPLY.—This section shall not apply with respect to any employer for any calendar quarter if such employer elects (at such time and in such manner as the Secretary of the Treasury (or the Secretary's delegate) may prescribe) not to have this section apply.

''(3) CERTAIN TERMS.—Except as otherwise provided in this section, any term used in this section which is also used in chapter 21 of such Code shall have the same meaning as when used in such chapter.

''(4) CERTAIN GOVERNMENTAL EMPLOYERS.—This credit shall not apply to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing.

''(4) [(5)] REFERENCES TO RAILROAD RETIREMENT TAX.—Any reference in this section to the tax imposed by section 3221(a) of the Internal Revenue Code of 1986 shall be treated as a reference to so much of such tax as is attributable to the rate in effect under section 3111(a) of such Code.

''(f) REGULATIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

''(1) regulations or other guidance to prevent the avoidance of the purposes of the limitations under this section,

''(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section,

''(3) regulations or other guidance providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit allowed under this section,

''(4) regulations or other guidance for recapturing the benefit of credits determined under this section in cases where there is a subsequent adjustment to the credit determined under subsection (a),

''(5) regulations or other guidance to ensure that the wages taken into account under this section conform with the paid sick time required to be provided under the Emergency Paid Sick Leave Act, and

''(6) regulations or other guidance to permit the advancement of the credit determined under subsection (a).

''(g) APPLICATION OF SECTION.—This section shall apply only to wages paid with respect to the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act [Mar. 18, 2020], and ending on March 31, 2021.

''(h) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(a)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard to this subsection). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.

''(i) TREATMENT OF DEPOSITS.—The Secretary of the Treasury (or the Secretary's delegate) shall waive any penalty under section 6656 of the Internal Revenue Code of 1986 for any failure to make a deposit of the tax imposed by section 3111(a) or 3221(a) of such Code if the Secretary determines that such failure was due to the anticipation of the credit allowed under this section.''

[Pub. L. 116–260, div. N, title II, § 288(f), Dec. 27, 2020, 134 Stat. 1993, provided that: ''The amendments made by this section [amending section 7001 of Pub. L. 116–127, set out above, and sections 7003 and 7005 of Pub. L. 116–127, set out below] shall take effect as if included in the provisions of the Families First Coronavirus Response Act [Pub. L. 116–127] to which they relate.'']

PAYROLL CREDIT FOR REQUIRED PAID FAMILY LEAVE

Pub. L. 116–127, div. G, § 7003, Mar. 18, 2020, 134 Stat. 214, as amended by Pub. L. 116–136, div. A, title III, § 3606(b), (c), Mar. 27, 2020, 134 Stat. 412; Pub. L. 116–260, div. N, title II, §§ 286(a), (b)(3), 288(a)–(c), div. EE, title III, § 303(d)(3)(C)(ii), Dec. 27, 2020, 134 Stat. 1989, 1990, 1992, 3077, provided that:

''(a) IN GENERAL.—In the case of an employer, there shall be allowed as a credit against the tax imposed by section 3111(a) or 3221(a) of the Internal Revenue Code of 1986 for each calendar quarter an amount equal to 100 percent of the qualified family leave wages paid by such employer with respect to such calendar quarter.

''(b) LIMITATIONS AND REFUNDABILITY.—

''(1) WAGES TAKEN INTO ACCOUNT.—The amount of qualified family leave wages taken into account under subsection (a) with respect to any individual shall not exceed—

''(A) for any day (or portion thereof) for which the individual is paid qualified family leave wages, $200, and

''(B) in the aggregate with respect to all calendar quarters, $10,000.

''(2) CREDIT LIMITED TO CERTAIN EMPLOYMENT TAXES.—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the tax imposed by section 3111(a) or 3221(a) of such Code for such calendar quarter (reduced by any credits allowed under subsections (e) and (f) of section 3111 of such Code, section 7001 of this Act [set out as a note above], and section 303(d) of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 [div. EE of Pub. L. 116–260, 134 Stat. 3076, in part amending this note and provisions set out as notes under this section; see Tables for classification], for such quarter) on the wages paid with respect to the employment of all employees of the employer.

''(3) REFUNDABILITY OF EXCESS CREDIT.—

''(A) CREDIT IS REFUNDABLE.—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (2) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b) of such Code.

''(B) ADVANCING CREDIT.—In anticipation of the credit, including the refundable portion under subparagraph (A), the credit may be advanced, according to forms and instructions provided by the Secretary, up to an amount calculated under subsection (a), subject to the limits under subsection (b), both calculated through the end of the most recent payroll period in the quarter.

''(c) QUALIFIED FAMILY LEAVE WAGES.—For purposes of this section, the term 'qualified family leave wages' means wages (as defined in section 3121(a) of such Code, determined without regard to paragraphs (1) through (22) of section 3121(b) of such Code and section 7005(a) of this Act [set out below],) [sic] and compensation (as defined in section 3231(e) of the Internal Revenue Code [of 1986], determined without regard to the sentence in paragraph (1) thereof which begins 'Such term does not include remuneration' and without regard to section 7005(a) of this Act) paid by an employer—

''(1) which are required to be paid by reason of the Emergency Family and Medical Leave Expansion Act [div. C of Pub. L. 116–127, see Short Title of 2020 Amendment note set out under section 2601 of Title 29, Labor] (including the amendments made by such Act), or

''(2) both—

''(A) which would be so required to be paid if section 102(a)(1)(F) of the Family and Medical Leave Act of 1993 [29 U.S.C. 2612(a)(1)(F)], as amended by the Emergency Family and Medical Leave Expansion Act, were applied by substituting 'March 31, 2021' for 'December 31, 2020', and

''(B) with respect to which all requirements of the Family and Medical Leave Act of 1993 (other than section 107 [29 U.S.C. 2617] thereof, and determined by substituting 'To be compliant with section 102(a)(1)(F), an employer may not' for 'It shall be unlawful for any employer to' each place it appears in subsection (a) of section 105 [29 U.S.C. 2615] thereof, by substituting 'made unlawful in this title or described in this section' for 'made unlawful by this title' in paragraph (2) of such subsection, and by substituting 'To be compliant with section 102(a)(1)(F), an employer may not' for 'It shall be unlawful for any person to' in subsection (b) of such section) which relate to such section 102(a)(1)(F), and which would apply if so required, are satisfied.

''(d) ALLOWANCE OF CREDIT FOR CERTAIN HEALTH PLAN EXPENSES.—

''(1) IN GENERAL.—The amount of the credit allowed under subsection (a) shall be increased by so much of the employer's qualified health plan expenses as are properly allocable to the qualified family leave wages for which such credit is so allowed.

''(2) QUALIFIED HEALTH PLAN EXPENSES.—For purposes of this subsection, the term 'qualified health plan expenses' means amounts paid or incurred by the employer to provide and maintain a group health plan (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a) of such Code.

''(3) ALLOCATION RULES.—For purposes of this section, qualified health plan expenses shall be allocated to qualified family leave wages in such manner as the Secretary of the Treasury (or the Secretary's delegate) may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

''(e) SPECIAL RULES.—

''(1) DENIAL OF DOUBLE BENEFIT.—For purposes of chapter 1 of such Code, the gross income of the employer, for the taxable year which includes the last day of any calendar quarter with respect to which a credit is allowed under this section, shall be increased by the amount of such credit. Any wages taken into account in determining the credit allowed under this section shall not be taken into account for purposes of determining the credit allowed under section 45S of such Code.

''(2) ELECTION NOT TO HAVE SECTION APPLY.—This section shall not apply with respect to any employer for any calendar quarter if such employer elects (at such time and in such manner as the Secretary of the Treasury (or the Secretary's delegate) may prescribe) not to have this section apply.

''(3) CERTAIN TERMS.—Except as otherwise provided in this section, any term used in this section which is also used in chapter 21 of such Code shall have the same meaning as when used in such chapter.

''(4) CERTAIN GOVERNMENTAL EMPLOYERS.—This credit shall not apply to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing.

''(4) [(5)] REFERENCES TO RAILROAD RETIREMENT TAX.—Any reference in this section to the tax imposed by section 3221(a) of the Internal Revenue Code of 1986 shall be treated as a reference to so much of such tax as is attributable to the rate in effect under section 3111(a) of such Code.

''(f) REGULATIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

''(1) regulations or other guidance to prevent the avoidance of the purposes of the limitations under this section,

''(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section,

''(3) regulations or other guidance providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit allowed under this section,

''(4) regulations or other guidance for recapturing the benefit of credits determined under this section in cases where there is a subsequent adjustment to the credit determined under subsection (a),

''(5) regulations or other guidance to ensure that the wages taken into account under this section conform with the paid leave required to be provided under the Emergency Family and Medical Leave Expansion Act (including the amendments made by such Act), and

''(6) regulations or other guidance to permit the advancement of the credit determined under subsection (a).

''(g) APPLICATION OF SECTION.—This section shall apply only to wages paid with respect to the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act [Mar. 18, 2020], and ending on March 31, 2021.

''(h) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(a)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard to this subsection). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.

''(i) TREATMENT OF DEPOSITS.—The Secretary of the Treasury (or the Secretary's delegate) shall waive any penalty under section 6656 of the Internal Revenue Code of 1986 for any failure to make a deposit of the tax imposed by section 3111(a) or 3221(a) of such Code if the Secretary determines that such failure was due to the anticipation of the credit allowed under this section.''

[Pub. L. 116–260, div. N, § 288(a)(1)(A), which directed amendment of section 7003(c) of Pub. L. 116–127, set out above, by inserting '', determined without regard to paragraphs (1) through (22) of section 3121(b) of such Code'' after ''as defined in section 3121(a) of the Internal Revenue Code of 1986'', was executed by making the insertion after ''as defined in section 3121(a) of such Code'' to reflect the probable intent of Congress.]

SPECIAL RULE RELATED TO TAX ON EMPLOYERS

Pub. L. 116–127, div. G, § 7005, Mar. 18, 2020, 134 Stat. 219, as amended by Pub. L. 116–260, div. N, title II, §§ 286(b)(5), 288(d), (e), Dec. 27, 2020, 134 Stat. 1991, 1992, provided that:

''(a) IN GENERAL.—Any wages required to be paid by reason of the Emergency Paid Sick Leave Act [div. E of Pub. L. 116–127, 29 U.S.C. 2601 note] and the Emergency Family and Medical Leave Expansion Act [div. C of Pub. L. 116–127, see Short Title of 2020 Amendment note set out under section 2601 of Title 29, Labor] (or, in the case of wages paid after December 31, 2020, and before April 1, 2021, with respect to which a credit is allowed under section 7001 [set out above] or 7003 [set out above]) shall not be considered wages for purposes of section 3111(a) of the Internal Revenue Code of 1986 or compensation for purposes of section 3221(a) of such Code. Any reference in this subsection to the tax imposed by section 3221(a) of such Code shall be treated as a reference to so much of the tax as is attributable to the rate in effect under section 3111(a) of such Code.

''(b) ALLOWANCE OF CREDIT FOR HOSPITAL INSURANCE TAXES.—

''(1) IN GENERAL.—The credit allowed by section 7001 and the credit allowed by section 7003 shall each be increased by the amount of the tax imposed by section 3111(b) of the Internal Revenue Code of 1986 and so much of the taxes imposed under section 3221(a) of such Code as are attributable to the rate in effect under section 3111(b) of such Code on qualified sick leave wages, or qualified family leave wages, for which credit is allowed under such section 7001 or 7003 (respectively).

''(2) DENIAL OF DOUBLE BENEFIT.—For denial of double benefit with respect to the credit increase under paragraph (1), see sections 7001(e)(1) and 7003(e)(1).

''(c) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(a)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard to this subsection). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.''

§ 3112. Instrumentalities of the United States

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

less such other provision of law grants a specific exemption, by reference to section 3111 (or the corresponding section of prior law), from the tax imposed by such section.

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

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

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

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

Subchapter C—General Provisions

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

Editorial Notes

AMENDMENTS

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

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

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

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

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

§ 3121. Definitions

(a) Wages

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

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

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

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

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

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

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

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

(5) any payment made to, or on behalf of, an employee or his beneficiary—

(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment un-

less such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(17) Repealed. Pub. L. 113–295, div. A, title II, § 221(a)(19)(B)(iv), Dec. 19, 2014, 128 Stat. 4040]

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

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

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

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

(22) remuneration on account of—

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

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

(23) any benefit or payment which is excludable from the gross income of the employee under section section[1] 139B(a).

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

(b) Employment

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

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

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

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

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

(i) the employer is a surviving spouse or a divorced individual and has not remarried, or has a spouse living in the home who has a mental or physical condition which results in such spouse's being incapable of caring for a son, daughter, stepson, or stepdaughter (referred to in clause (ii)) for at least 4 continuous weeks in the calendar quarter in which the service is rendered, and

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

(iii) the son, daughter, stepson, or stepdaughter (referred to in clause (ii)) has not attained age 18 or has a mental or physical condition which requires the personal care

[1] So in original.

and supervision of an adult for at least 4 continuous weeks in the calendar quarter in which the service is rendered;

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

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

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

(B) is performed by an individual who—

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

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

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

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

(V) if an individual performing service described in subparagraph (A) returns to the performance of such service after employment (by a tribal organization) to which section 104(e)(2) of the Indian Self-Determination Act applies, then the service performed for that tribal organization shall be considered service described in subparagraph (A); or

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

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

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

(D) service performed—

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

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

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

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

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

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

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

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

(iii) is performed by an individual after such individual has otherwise ceased to be

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

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

(H) service performed by an individual—

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

(ii) on or after the effective date of an election by such individual, under regulations issued under section 860 of the Foreign Service Act of 1980, to become subject to the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of such Act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

purposes of this subparagraph, clauses (i) and (ii) of subparagraph (B) shall apply,

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

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

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

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

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

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

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

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

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

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

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

(10) service performed in the employ of—

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

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

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

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

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

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

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

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

(14)(A) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

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

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

(A) such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry, and 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) Repealed. Pub. L. 113–295, div. A, title II, § 221(a)(99)(C)(i), Dec. 19, 2014, 128 Stat. 4052]

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

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

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

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

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

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

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

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

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

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

(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; or

(22) service performed by members of Indian tribal councils as tribal council members in the employ of an Indian tribal government, except that this paragraph shall not apply in the case of service included under an agreement under section 218A of the Social Security Act.

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

(c) Included and excluded service

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

(d) Employee

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

(1) any officer of a corporation; or

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

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

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

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

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

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

other similar establishments for merchandise for resale or supplies for use in their business operations;

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

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

(e) State, United States, and citizen

For purposes of this chapter—

(1) State

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

(2) United States

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

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

(f) American vessel and aircraft

For purposes of this chapter, the term ''American vessel'' means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State; and the term ''American aircraft'' means an aircraft registered under the laws of the United States.

(g) Agricultural labor

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

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

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

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

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

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

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

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

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

(h) American employer

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

(1) the United States or any instrumentality thereof,

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

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

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

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

(i) Computation of wages in certain cases

(1) Domestic service

For purposes of this chapter, in the case of domestic service described in subsection

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

(2) Service in the uniformed services

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

(3) Peace Corps volunteer service

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

(4) Service performed by certain members of religious orders

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

(5) Service performed by certain retired justices and judges

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

(j) Covered transportation service

For purposes of this chapter—

(1) Existing transportation systems—General rule

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

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

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

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

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

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

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

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

the service of such employee in connection with the operation of the transportation system shall constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such part

took place, unless on such first day such service of such employee is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees described in subparagraph (C).

(3) Transportation systems acquired after 1950

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

(4) Definitions

For purposes of this subsection—

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

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

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

(i) a State,

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

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

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

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

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

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

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

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

(2) Effective period of agreement

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

(3) No termination of agreement

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

(4) Deposits in trust funds

For purposes of section 201 of the Social Security Act, relating to appropriations to the

Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, such remuneration—

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

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

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

(5) Overpayments and underpayments

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

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

(6) Foreign affiliate defined

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

(A) In general

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

(B) Determination of 10-percent interest

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

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

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

(7) American employer as separate entity

Each American employer which enters into an agreement pursuant to paragraph (1) of this subsection shall, for purposes of this subsection and section 6413(c)(2)(C), relating to special refunds in the case of employees of certain foreign entities, be considered an employer in its capacity as a party to such agreement separate and distinct from its identity as a person employing individuals on its own account.

(8) Regulations

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

(m) Service in the uniformed services

For purposes of this chapter—

(1) Inclusion of service

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

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

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

(2) Active duty

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

(3) Inactive duty training

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

(n) Member of a uniformed service

For purposes of this chapter, the term ''member of a uniformed service'' means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including a reserve component as defined in section 101(27) of title 38, United States Code), or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey, the National Oceanic and Atmospheric Administration Corps, or the Regular or Reserve Corps[2] of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

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

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

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

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

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

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

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

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

[2] See Change of Name note below.

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

(*o*) Crew leader

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

(p) Peace Corps volunteer service

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

(q) Tips included for both employee and employer taxes

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

(r) Election of coverage by religious orders

(1) Certificate of election by order

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

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

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

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

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

(2) Definition of member

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

(3) Effective date for election

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

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

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

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

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

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

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

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

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

(s) Concurrent employment by two or more employers

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

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

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

(1) Federal employment

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

(2) State and local employment

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

(A) In general

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

(B) Exception for certain services

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

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

(ii) the service is performed—

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

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

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

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

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

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

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

(C) Exception for current employment which continues

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

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

(ii) such service is performed by an individual—

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

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

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

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

(D) Treatment of agencies and instrumentalities

For purposes of subparagraph (C), under regulations—

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

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

(3) Medicare qualified government employment

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

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

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

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

(1) Certain employer contributions treated as wages

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

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

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

(2) Treatment of certain nonqualified deferred compensation plans

(A) In general

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

(i) when the services are performed, or

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

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

(B) Taxed only once

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

(C) Nonqualified deferred compensation plan

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

(3) Exempt governmental deferred compensation plan

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

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

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

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

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

(1) General rule

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

(2) Timing and duration of election

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

(3) Definitions

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

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

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

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

(x) Applicable dollar threshold

For purposes of subsection (a)(7)(B), the term ''applicable dollar threshold'' means $1,000. In the case of calendar years after 1995, the Commissioner of Social Security shall adjust such $1,000 amount at the same time and in the same manner as under section 215(a)(1)(B)(ii) of the Social Security Act with respect to the amounts referred to in section 215(a)(1)(B)(i) of such Act, except that, for purposes of this paragraph, 1993

shall be substituted for the calendar year referred to in section 215(a)(1)(B)(ii)(II) of such Act. If any amount as adjusted under the preceding sentence is not a multiple of $100, such amount shall be rounded to the next lowest multiple of $100.

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

(1) In general

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

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

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

(2) Definitions

For purposes of this subsection—

(A) Federal agency

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

(B) International organization

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

(z) Treatment of certain foreign persons as American employers

(1) In general

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

(2) Domestically controlled group of entities

For purposes of this subsection—

(A) In general

The term ''domestically controlled group of entities'' means a controlled group of entities the common parent of which is a domestic corporation.

(B) Controlled group of entities

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

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

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

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

(3) Liability of common parent

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

(4) Provisions preventing double taxation

(A) Agreements

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

(B) Equivalent foreign taxation

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

(5) Cross reference

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

(Aug. 16, 1954, ch. 736, 68A Stat. 417; Sept. 1, 1954, ch. 1206, title II, §§204(a), (b), 205(a)–(e), 206(a), 207, 209, 68 Stat. 1091–1094; Aug. 1, 1956, ch. 836, title I, §§103(j), 121(d), title II, §§201(b)–(d), (e)(1), (h)(1), (2), (j)–(*l*), 70 Stat. 824, 839–841, 843; Aug. 1, 1956, ch. 837, title IV, §§410, 411(a), 70 Stat. 878; Pub. L. 85–840, title IV, §§402(b), 404(a), 405(a), (b), Aug. 28, 1958, 72 Stat. 1042, 1044–1046; Pub. L. 85–866, title I, §69, Sept. 2, 1958, 72 Stat. 1659; Pub. L. 86–70, §22(a), June 25, 1959, 73 Stat. 146; Pub. L. 86–168, title I, §104(h), title II, §202(a), Aug. 18, 1959, 73 Stat. 387, 389; Pub. L. 86–624, §18(c), July 12, 1960, 74 Stat. 416; Pub. L. 86–778, title I, §§103(n)–(p), 104(b), 105(a), Sept. 13, 1960, 74 Stat. 938, 939, 942; Pub. L. 87–256, §110(e)(1), Sept. 21, 1961, 75 Stat. 536; Pub. L. 87–293, title II, §202(a)(1), (2), Sept. 22, 1961, 75 Stat. 626; Pub. L. 88–272, title II, §220(c)(2), Feb. 26, 1964, 78 Stat. 62; Pub. L. 88–650, §4(b), Oct. 13, 1964, 78 Stat. 1077; Pub. L. 89–97, title III, §§311(b)(4), (5), 313(c)(3), (4), 316(a)(1), (b), 317(b), 320(b)(2), July 30, 1965, 79 Stat. 381, 383, 386, 388, 393; Pub. L. 90–248, title I, §§108(b)(2), 123(b), title IV, §403(i), title V, §504(a), Jan. 2, 1968, 81 Stat. 835, 845, 932, 934; Pub. L. 91–172, title IX, §943(c)(1)–(3), Dec. 30,

1969, 83 Stat. 728; Pub. L. 92–5, title II, § 203(b)(2), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92–336, title II, § 203(b)(2), July 1, 1972, 86 Stat. 419; Pub. L. 92–603, title I, §§ 104(i), 122(b), 123(a)(2), (b), (c)(2), 128(b), 129(a)(2), 138(b), Oct. 30, 1972, 86 Stat. 1341, 1354, 1356, 1358, 1359, 1365; Pub. L. 93–66, title II, § 203(b)(2), (d), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, § 5(b)(2), (d), Dec. 31, 1973, 87 Stat. 954; Pub. L. 94–455, title XII, § 1207(e)(1)(A), title XIX, §§ 1903(a)(3), 1906(b)(13)(A), (C), Oct. 4, 1976, 90 Stat. 1706, 1807, 1834; Pub. L. 94–563, § 1(b), (c), Oct. 19, 1976, 90 Stat. 2655; Pub. L. 95–216, title III, §§ 312(a), (b), (d), (f), (g), 314(a), 315(a), 356(a)–(d), Dec. 20, 1977, 91 Stat. 1532–1536, 1555; Pub. L. 95–472, § 3(b), Oct. 17, 1978, 92 Stat. 1333; Pub. L. 95–600, title I, § 164(b)(3), Nov. 6, 1978, 92 Stat. 2814; Pub. L. 96–222, title I, § 101(a)(10)(B)(i), Apr. 1, 1980, 94 Stat. 201; Pub. L. 96–499, title XI, § 1141(a)(1), Dec. 5, 1980, 94 Stat. 2693; Pub. L. 97–34, title I, § 124(e)(2)(A), Aug. 13, 1981, 95 Stat. 200; Pub. L. 97–123, § 3(b), Dec. 29, 1981, 95 Stat. 1662; Pub. L. 97–248, title II, § 278(a)(1), Sept. 3, 1982, 96 Stat. 559; Pub. L. 98–21, title I, §§ 101(b), (c)(2), 102(b), title III, §§ 321(a), (e)(1), 322(a)(2), 323(a)(1), 324(a), 327(a)(1), (b)(1), 328(a), Apr. 20, 1983, 97 Stat. 69, 70, 118, 119, 121, 122, 126–128; Pub. L. 98–369, div. A, title I, § 67(c), title IV, § 491(d)(36), title V, § 531(d)(1)(A), div. B, title VI, §§ 2601(b), 2603(a)(2), (b), 2661(*o*)(3), 2663(i), (j)(5)(C), July 18, 1984, 98 Stat. 587, 851, 884, 1124, 1128, 1159, 1169, 1171; Pub. L. 99–221, § 3(b), Dec. 26, 1985, 99 Stat. 1735; Pub. L. 99–272, title XII, § 12112(b), title XIII, §§ 13205(a)(1), 13303(c)(2), Apr. 7, 1986, 100 Stat. 288, 313, 327; Pub. L. 99–335, title III, § 304(b), June 6, 1986, 100 Stat. 606; Pub. L. 99–509, title IX, § 9002(b)(1)(A), (2)(A), Oct. 21, 1986, 100 Stat. 1971; Pub. L. 99–514, title I, § 122(e)(1), title XI, §§ 1108(g)(7), 1147(b), 1151(d)(2)(A), title XVIII, §§ 1882(c), 1883(a)(11)(B), 1895(b)(18)(A), 1899A(38)–(40), Oct. 22, 1986, 100 Stat. 2112, 2435, 2494, 2505, 2915, 2916, 2935, 2960; Pub. L. 100–203, title IX, §§ 9001(b), 9002(b), 9003(a)(2), 9004(b), 9005(b), 9006(a), (b)(2), 9023(d), Dec. 22, 1987, 101 Stat. 1330–286 to 1330–289, 1330–296; Pub. L. 100–647, title I, §§ 1001(d)(2)(C)(i), (g)(4)(B)(i), 1011(e)(8), 1011B(a)(22)(A), (23)(A), 1018(r)(2)(A), (u)(35), title III, § 3043(c)(2), title VIII, §§ 8015(b)(2), (c)(2), 8016(a)(3)(A), (4)(A), (C), 8017(b), Nov. 10, 1988, 102 Stat. 3351, 3352, 3461, 3485, 3486, 3586, 3592, 3642, 3791–3793; Pub. L. 101–140, title II, § 203(a)(2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title X, § 10201(a), (b)(3), Dec. 19, 1989, 103 Stat. 2472; Pub. L. 101–508, title XI, §§ 11331(a), 11332(b), Nov. 5, 1990, 104 Stat. 1388–467, 1388–469; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 102–318, title V, § 521(b)(34), July 3, 1992, 106 Stat. 312; Pub. L. 103–66, title XIII, § 13207(a), Aug. 10, 1993, 107 Stat. 467; Pub. L. 103–178, title II, § 204(c), Dec. 3, 1993, 107 Stat. 2033; Pub. L. 103–296, title I, § 108(h)(2), title III, §§ 303(a)(2), (b)(2), 319(a)(1), (5), 320(a)(1)(C), Aug. 15, 1994, 108 Stat. 1487, 1519, 1533–1535; Pub. L. 103–387, § 2(a)(1)(A)–(C), Oct. 22, 1994, 108 Stat. 4071; Pub. L. 104–188, title I, §§ 1116(a)(1)(A), (B), 1421(b)(8)(A), 1458(b)(1), Aug. 20, 1996, 110 Stat. 1762, 1798, 1819; Pub. L. 105–33, title XI, § 11246(b)(2)(A), as added Pub. L. 105–277, div. A, § 101(h) [title VIII, § 802(a)(2)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–532; Pub. L. 105–61, title VI, § 642(d)(2), Oct. 10, 1997, 111 Stat. 1319; Pub. L. 105–206, title VI, § 6023(13), July 22, 1998, 112 Stat. 825; Pub. L. 106–554, § 1(a)(7) [title III, § 319(15)], Dec. 21, 2000, 114 Stat. 2763, 2763A–647; Pub. L. 108–121, title I, § 106(b)(2), Nov. 11, 2003, 117 Stat. 1339; Pub. L. 108–203, title IV, § 423(a), (c), Mar. 2, 2004, 118 Stat. 536; Pub. L. 108–357, title II, § 251(a)(1)(A), title III, § 320(b)(1), title VIII, § 802(c)(1), Oct. 22, 2004, 118 Stat. 1458, 1473, 1568; Pub. L. 108–375, div. A, title V, § 585(b)(2)(B), Oct. 28, 2004, 118 Stat. 1932; Pub. L. 109–280, title VIII, § 854(c)(8), Aug. 17, 2006, 120 Stat. 1018; Pub. L. 110–172, § 8(a)(2), Dec. 29, 2007, 121 Stat. 2483; Pub. L. 110–245, title I, § 115(a)(1), title III, § 302(a), June 17, 2008, 122 Stat. 1636, 1647; Pub. L. 110–458, title I, § 108(k)(1), Dec. 23, 2008, 122 Stat. 5110; Pub. L. 113–295, div. A, title II, § 221(a)(19)(B)(iv), (99)(C)(i), Dec. 19, 2014, 128 Stat. 4040, 4052; Pub. L. 115–141, div. U, title IV, § 401(a)(209), (210), (325)(A), Mar. 23, 2018, 132 Stat. 1194, 1199; Pub. L. 115–243, § 2(b)(2), Sept. 20, 2018, 132 Stat. 2895; Pub. L. 116–94, div. O, title III, § 301(c), Dec. 20, 2019, 133 Stat. 3175.)

Editorial Notes

REFERENCES IN TEXT

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

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

Section 104(e)(2) of the Indian Self-Determination Act, referred to in subsec. (b)(5)(B)(i)(V), is classified to section 5323(e)(2) of Title 25, Indians.

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

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

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

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

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

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

The Peace Corps Act, referred to in subsecs. (i)(3), (p), is Pub. L. 87–293, title I, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Inter-

course. Sections 5 and 6 of the Peace Corps Act are classified to sections 2504 and 2505 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

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

The Military Selective Service Act, referred to in subsec. (n)(5)(B), is act June 24, 1948, ch. 625, 62 Stat. 604, which is classified principally to chapter 49 (§ 3801 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

CONSTITUTIONALITY

For information regarding constitutionality of certain provisions of this section, see note under section 410 of Title 42, The Public Health and Welfare.

AMENDMENTS

2019—Subsec. (a)(23). Pub. L. 116–94 substituted ''section 139B(a)'' for ''139B(b)''.

2018—Subsec. (b)(5)(B)(i)(V). Pub. L. 115–141, § 401(a)(209), substituted ''section 104(e)(2)'' for ''section 105(e)(2)''.

Subsec. (b)(5)(E). Pub. L. 115–141, § 401(a)(325)(A), substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

Subsec. (b)(5)(H)(i). Pub. L. 115–141, § 401(a)(210), inserted comma after ''1997''.

Subsec. (b)(22). Pub. L. 115–243, § 2(b)(2)(A), added par. (22).

Subsec. (d)(4). Pub. L. 115–243, § 2(b)(2)(B), inserted ''or 218A'' after ''section 218''.

2014—Subsec. (a)(17). Pub. L. 113–295, § 221(a)(19)(B)(iv), struck out par. (17) which read as follows: ''any contribution, payment, or service provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans);''.

Subsec. (b)(17). Pub. L. 113–295, § 221(a)(99)(C)(i), struck out par. (17) which read as follows: ''service in the employ of any organization which is performed (A) in any year during any part of which such organization is registered, or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, under the Internal Security Act of 1950, as amended, as a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, and (B) after June 30, 1956;''.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1992—Subsec. (v)(1)(A). Pub. L. 102–318 substituted ''402(e)(3)'' for ''402(a)(8)''.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (b)(5). Pub. L. 100–647, § 8015(c)(2), inserted ''any such service performed on or after any date on which such individual performs'' after ''with respect to'' in provision preceding subpar. (C).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Pub. L. 100–203, § 9004(b)(2), inserted introductory provisions and struck out former introductory provisions which read as follows: ''service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an indi-

vidual in the employ of his son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service if—''.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(ii) in the legislative branch;

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

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

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

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

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

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

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

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

Subsec. (*l*)(1). Pub. L. 98–21, § 321(a)(1), substituted ''affiliates'' for ''subsidiaries'' in par. (1) heading, and

in first sentence of provisions preceding subpar. (A), substituted ''at the American employer's request'' for ''at the request of any domestic corporation'', ''any American employer (as defined in subsection (h)) who'' for ''any such corporation which'', ''such manner and form'' for ''such form and manner'', and ''affiliates'' for ''subsidiaries'' after ''such employer's foreign'', and inserted ''or residents'' after ''citizens''.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (k)(4)(A). Pub. L. 95–216, §312(b)(2), (f), substituted ''(or, if later, as of the earliest date on which it satisfies clause (ii) of this subparagraph)'' for ''or any subsequent date'' in cl. (i) and, in provisions following cl. (ii), inserted ''(subject to subparagraph (C))'' after ''effective''.

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (b)(8)(B). Pub. L. 94–563, §1(b), inserted ''or deemed to have been so filed under paragraph (4) or (5) of such subsection'' after ''filed pursuant to subsection (k) (or the corresponding subsection of prior law)'' in

provisions preceding cl. (i), inserted ''(or deemed to have been filed)'' after ''filed'' in cls. (i), (ii), and (iii), and substituted ''is (or is deemed to be) in effect'' for ''is in effect'' in provisions following cl. (iii).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (b)(3)(B). Pub. L. 90–248, § 123(b), provided for inclusion of family employment in a private home in definition of ''employment,'' upon compliance with conditions described in cls. (i) to (iii).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (k)(1)(A). Pub. L. 86–778, §105(a)(1), (2), struck out ''and that at least two-thirds of its employees concur in the filing of the certificate'' after ''extended to service performed by its employees'', and substituted ''of each employee (if any) who concurs'' for ''of each employee who concurs''.

Subsec. (k)(1)(E). Pub. L. 86–778, §105(a)(3), substituted ''in either group, or may file a separate certificate pursuant to such subparagraph with respect to the employees in each group'' for ''in one of the groups if at least two-thirds of the employees in such group concur in the filing of the certificate. The organization may also file such a certificate with respect to the employees in the other group if at least two-thirds of the employees in such other group concur in the filing of such certificate.''

1959—Subsec. (b)(6)(B)(ii). Pub. L. 86–168 substituted ''Federal land bank association'' for ''national farm loan association'', and included service in the employ of Federal land banks, Federal intermediate credit banks and banks for cooperatives.

Subsec. (e). Pub. L. 86–70 struck out ''Alaska,'' before ''Hawaii''.

1958—Subsec. (a)(1). Pub. L. 85–840, §402(b), substituted ''$4,800'' for ''$4,200'' wherever appearing.

Subsec. (b)(1). Pub. L. 85–840, §404(a), struck out provisions which excluded from definition of ''employment'' service performed in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 1141j of title 12.

Subsec. (b)(8)(B). Pub. L. 85–840, §405(b), made subparagraph inapplicable to service performed during the period for which a certificate is in effect if such service is performed by an employee who, after the calendar quarter in which the certificate was filed with respect to a group described in section 321(k)(1)(E) of this title, became a member of such group, and made subparagraph applicable with respect to service performed by an employee as a member of a group described in section 3121(k)(1)(E) of this title with respect to which no certificate is in effect.

Subsec. (k)(1). Pub. L. 85–840, §405(a), permitted amendment of the list at any time prior to the expiration of the twenty-fourth month following the calendar quarter in which the certificate is filed, allowed an organization to provide that the certificate shall be in effect for the period beginning with the first day of any calendar quarter preceding the calendar quarter in which the certificate is filed, except that, in the case of a certificate filed prior to Jan. 1, 1960, such date may not be earlier than Jan. 1, 1956, and in the case of a certificate filed after 1959, such date may not be earlier than the first day of the fourth calendar quarter preceding the quarter in which such certificate is first made the certificate effective in the case of services performed by an employee whose name appears on a supplemental list only with respect to service performed by the employee for the period beginning with the first day of the calendar quarter in which the supplemental list is filed, required organizations described in subpar. (A) which employ both individuals who are in positions covered by a pension, annuity, retirement, or similar fund or system established by a State or political subdivision thereof and individuals who are not in such positions, to divide their employees into two separate groups, authorized the filing of requests by organizations which filed certificates after 1955 but prior to Aug. 28, 1958, to have such certificates effective, with respect to services of certain individuals, for the period beginning with the first day of any calendar quarter preceding the first calendar quarter for which they are effective and following the last calendar quarter of 1955, and provided for the due date and payment of tax for certain calendar quarters and for the expiration of the statutory period of assessment.

Subsec. (*l*)(3). Pub. L. 85–866 substituted ''by'' for ''be'' in heading.

1956—Subsec. (a)(8)(B). Act Aug. 1, 1956, ch. 836, §201(h)(1), included within definition of wages cash remuneration of $150 or more, and cash remuneration computed on a time basis where the employee performs agricultural labor for the employer on 20 days or more during the calendar year.

Subsec. (a)(9). Act Aug. 1, 1956, ch. 836, §201(b), excluded payments made to a woman after she attains the age of 62.

Subsec. (b)(1)(B). Act Aug. 1, 1956, ch. 836, §201(c), excepted from term ''employment'' services performed by foreign agricultural workers lawfully admitted from any foreign country or possession thereof, on a temporary basis to perform agricultural labor.

Subsec. (b)(6)(B)(ii). Act Aug. 1, 1956, ch. 836, §201(d)(1), included service performed in the employ of a Federal Home Loan Bank.

Subsec. (b)(6)(C)(vi). Act Aug. 1, 1956, ch. 836, §201(d)(2), substituted ''Civil Service Retirement Act'' for ''Civil Service Retirement Act of 1930'', and inserted ''(other than the retirement system of the Tennessee Valley Authority)'' after ''retirement system''.

Subsec. (b)(16), (17). Act Aug. 1, 1956, ch. 836, §§201(e)(1), 121d, added pars. (16) and (17).

Subsec. (i). Act Aug. 1, 1956, ch. 837, §410, designated existing provisions as par. (1) and added par. (2).

Subsec. (k)(1). Act Aug. 1, 1956, ch. 836, §201(k), (*l*), inserted ''or at any time prior to January 1, 1959, whichever is the later'' after ''the certificate is in effect'', and substituted ''the first day of the calendar quarter in which such certificate is filed or the first day of the succeeding calendar quarter, as may be specified in the certificate,'' for ''the first day following the close of the calendar quarter in which such certificate is filed,''.

Subsec. (*l*)(6). Act Aug. 1, 1956, ch. 836, §103(j), inserted reference to the Federal Disability Insurance Trust Fund.

Subsec. (*l*)(8)(A). Act Aug. 1, 1956, ch. 836, §201(j), substituted ''not less than 20 percent'' for ''more than 50 percent''.

Subsecs. (m), (n). Act Aug. 1, 1956, ch. 837, §411(a), added subsecs. (m) and (n).

Subsec. (*o*). Act Aug. 1, 1956, ch. 836, §201(h)(2), added subsec. (*o*).

1954—Subsec. (a)(1). Act Sept. 1, 1954, §204(a), substituted ''$4,200'' for ''$3,600'' wherever appearing.

Subsec. (a)(7)(B). Act Sept. 1, 1954, §204(b)(1), made coverage of domestic service dependent solely on receipt of $50 in cash wages in a calendar quarter by an employee from an employer for such service.

Subsec. (a)(7)(C). Act Sept. 1, 1954, §204(b)(2), added subpar. (C).

Subsec. (a)(8). Act Sept. 1, 1954, §204(b)(3), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(1). Act Sept. 1, 1954, §205(a), made coverage of agricultural labor depend solely on the payment of cash remuneration of $100 or more per year, thereby eliminating the need for an agricultural laborer to have served a qualifying calendar quarter and to have worked on a full time basis for 60 days during a succeeding calendar quarter and to have received $50 or more for his labor during such succeeding calendar quarter, removed the specific exception from employment of services performed in connection with the ginning of cotton, and added an exception for services performed by West Indian agricultural workers lawfully admitted to the United States on a temporary basis.

Subsec. (b)(3). Act Sept. 1, 1954, §205(b), struck out par. (3) and redesignated pars. (4) to (14) as (3) to (13), respectively.

Subsec. (b)(4). Act Sept. 1, 1954, §205(c), amended par. (4), as redesignated, to make the exception with respect to services on non-American vessels or aircraft applicable only if the individual is not a United States citizen or the employer is not an American employer.

Subsec. (b)(6)(B). Act Sept. 1, 1954, §205(d)(1)(A), amended par. (6), as redesignated, by inserting in subpar. (B) ''by an individual'' after ''service is performed'' and ''and if such service is covered by a retirement system established by such instrumentality'' after ''December 31, 1950''.

Subsec. (b)(6)(B)(v). Act Sept. 1, 1954, § 205(d)(1)(B), amended par. (6), as redesignated, by adding cl. (v) to subpar. (B).

Subsec. (b)(6)(C). Act Sept. 1, 1954, § 205(d)(2), struck out exception from coverage for services in the following categories: temporary employees in the Post Office Department field service; temporary census taking employees of the Bureau of the Census; Federal employees paid on a contract or fee basis; Federal employees receiving compensation of $12 a year or less; certain consular agents; individuals employed under Federal unemployment relief programs; and members of State, county, or community committees under the Commodity Stabilization Service and similar bodies, unless such bodies are composed exclusively of full-time Federal employees, and limited the exclusion of inmates or patients of United States institutions to inmates of penal institutions.

Subsec. (b)(14) to (17). Act Sept. 1, 1954, § 205(e), struck out par. (15) and redesignated pars. (16) and (17) as (14) and (15), respectively.

Subsec. (c). Act Sept. 1, 1954, § 205(b), substituted ''subsection (b)(9)'' for ''subsection (b)(10)''.

Subsec. (d)(3)(C). Act Sept. 1, 1954, § 206(a), struck out requirement that performance of services of homeworkers be subject to State licensing requirements.

Subsec. (k)(1). Act Sept. 1, 1954, §§ 205(b), 207, substituted ''(b)(8)(B)'' for ''(b)(9)(B)'' and provided that the list accompanying any certificate filed by a nonprofit organization with respect to its lay employees may be amended only within a period of two years after the certificate takes effect and provided that a supplemental list filed after the first month following the first calendar quarter for which the certificate is in effect shall be in effect only as to those services performed by an individual on the list which are performed by him after the calendar quarter in which the supplemental list is filed.

Subsec. (*l*). Act Sept. 1, 1954, § 209, added subsec. (*l*).

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

''United States magistrate judge'' substituted for ''United States magistrate'' in subsec. (b)(5)(E) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

Reference to Reserve Corps of the Public Health Service deemed to be a reference to the Ready Reserve Corps, see section 204(c)(3) of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 2019 AMENDMENT

Amendment by Pub. L. 116–94 applicable to taxable years beginning after Dec. 31, 2019, see section 301(d) of Pub. L. 116–94, set out as a note under section 139B of this title.

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 OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Pub. L. 110–245, title I, § 115(d), June 17, 2008, 122 Stat. 1637, provided that: ''The amendments made by this section [amending this section, sections 3306 and 3401 of this title, and section 409 of Title 42, The Public Health and Welfare] shall take effect as if included in section 5 of the Mortgage Forgiveness Debt Relief Act of 2007 [Pub. L. 110–142].''

Pub. L. 110–245, title III, § 302(c), June 17, 2008, 122 Stat. 1648, provided that: ''The amendment made by this section [amending this section and section 410 of Title 42, The Public Health and Welfare] shall apply to services performed in calendar months beginning more than 30 days after the date of the enactment of this Act [June 17, 2008].''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provision of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 8(b) of Pub. L. 110–172, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by Pub. L. 108–375 applicable to travel benefits provided after Oct. 28, 2004, see section 585(b)(3) of Pub. L. 108–375, set out as a note under section 134 of this title.

Amendment by section 251(a)(1)(A) of Pub. L. 108–357 applicable to stock acquired pursuant to options exercised after Oct. 22, 2004, see section 251(d) of Pub. L. 108–357, set out as a note under section 421 of this title.

Amendment by section 320(b)(1) of Pub. L. 108–357 applicable to amounts received by an individual in taxable years beginning after Dec. 31, 2003, see section 320(c) of Pub. L. 108–357, set out as a note under section 108 of this title.

Amendment by section 802(c)(1) of Pub. L. 108–357 effective Mar. 4, 2003, see section 802(d) of Pub. L. 108–357, set out as an Effective Date note under section 4985 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–121 applicable to taxable years beginning after Dec. 31, 2002, see section 106(c) of Pub. L. 108–121, set out as a note under section 134 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. A, § 101(h) [title VIII, § 805], Oct. 21, 1998, 112 Stat. 2681–480, 2681–538, provided that: ''Except as otherwise specifically provided, this title [amending this section and section 410 of Title 42, The Public Health and Welfare, and amending provisions set out as a note under this section] and the amendments made by this title shall take effect as if included in the enactment of title XI of the Balanced Budget Act of 1997 [title XI of Pub. L. 105–33, see Effective Date of 1997 Amendment note below].''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–33, title XI, § 11246(b)(4), formerly § 11246(b)(3), Aug. 5, 1997, 111 Stat. 756, renumbered § 11246(b)(4), by Pub. L. 105–277, div. A, § 101(h) [title VIII, § 802(a)(1)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–532, provided that: ''The amendments made by this subsection [amending this section and section 410 of Title 42, The Public Health and Welfare] shall apply with respect to all months beginning after the date on which the Director of the Office of Personnel Management issues regulations to carry out section 11–1726, District of Columbia Code (as amended by paragraph (1)).''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, § 1116(a)(3), Aug. 20, 1996, 110 Stat. 1762, provided that:

''(A) IN GENERAL.—The amendments made by this subsection [amending this section, section 6050A of this title, and section 410 of Title 42, The Public Health and Welfare] shall apply to remuneration paid—

''(i) after December 31, 1994, and

''(ii) after December 31, 1984, and before January 1, 1995, unless the payor treated such remuneration (when paid) as being subject to tax under chapter 21 of the Internal Revenue Code of 1986.

''(B) REPORTING REQUIREMENT.—The amendment made by paragraph (1)(C) [amending section 6050A of this title] shall apply to remuneration paid after December 31, 1996.''

Amendment by section 1421(b)(8)(A) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Pub. L. 104–188, title I, §1458(c)(2), Aug. 20, 1996, 110 Stat. 1820, provided that: ''The amendments made by subsection (b) [amending this section and section 409 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1996.''

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by section 2(a)(1)(A), (B) of Pub. L. 103–387 applicable to remuneration paid after Dec. 31, 1993, and amendment by section 2(a)(1)(C) of Pub. L. 103–387 applicable to services performed after Dec. 31, 1994, see section 2(a)(3) of Pub. L. 103–387, set out as a note under section 3102 of this title.

Amendment by section 108(h)(2) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

Amendment by section 303(a)(2), (b)(2) of Pub. L. 103–296 applicable with respect to service performed on or after Jan. 1, 1995, see section 303(e) of Pub. L. 103–296, set out as a note under section 410 of Title 42.

Amendment by section 319(a)(1), (5) of Pub. L. 103–296 applicable with respect to service performed after calendar quarter following calendar quarter in which Aug. 15, 1994, occurs, see section 319(c) of Pub. L. 103–296, set out as a note under section 1402 of this title.

Amendment by section 320(a)(1)(C) of Pub. L. 103–296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103–296, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to 1994 and later calendar years, see section 13207(e) of Pub. L. 103–66, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11331(a) of Pub. L. 101–508 applicable to 1991 and later calendar years, see section 11331(e) of Pub. L. 101–508, set out as a note under section 1402 of this title.

Pub. L. 101–508, title XI, §11332(d), Nov. 5, 1990, 104 Stat. 1388–470, provided that: ''The amendments made by this section [amending this section and sections 410 and 418 of Title 42, The Public Health and Welfare] shall apply with respect to service performed after July 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by Pub. L. 101–239 applicable with respect to any agreement in effect under section 3121(*l*) of this title on or after June 15, 1989, with respect to which no notice of termination is in effect on such date, see section 10201(c) of Pub. L. 101–239, set out as a note under section 406 of this title.

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title I, §1011B(a)(22)(F), Nov. 10, 1988, 102 Stat. 3486, provided that: ''The amendments made by this paragraph [amending this section, sections 3231, 3306, and 3401 of this title, and section 409 of Title 42, The Public Health and Welfare] shall not apply to any individual who separated from service with the employer before January 1, 1989.''

Pub. L. 100–647, title I, §1018(r)(2)(B), Nov. 10, 1988, 102 Stat. 3586, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to services performed after March 31, 1986.''

Amendment by sections 1001(d)(2)(C)(i), (g)(4)(B)(i), 1011(e)(8), 1011B(a)(23)(A), and 1018(u)(35) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 3043(c)(2) of Pub. L. 100–647 applicable to all periods beginning before, on, or after Nov. 10, 1988, with no inference created as to existence or nonexistence or scope of any exemption from tax for income derived from fishing rights secured as of Mar. 17, 1988, by any treaty, law, or Executive Order, see section 3044 of Pub. L. 100–647, set out as an Effective Date note under section 7873 of this title.

Pub. L. 100–647, title VIII, §8015(b)(3), Nov. 10, 1988, 102 Stat. 3792, provided that: ''The amendments made by this subsection [amending this section and section 410 of Title 42, The Public Health and Welfare] shall apply as if such amendments had been included or reflected in section 304 of the Federal Employees' Retirement System Act of 1986 (100 Stat. 606) [Pub. L. 99–335] at the time of its enactment [June 6, 1986].''

Pub. L. 100–647, title VIII, §8015(c)(3), Nov. 10, 1988, 102 Stat. 3792, provided that: ''The amendments made by this subsection [amending this section and section 410 of Title 42] shall apply to any individual only upon the performance by such individual of service described in subparagraph (C), (D), (E), (F), (G), or (H) of section 210(a)(5) of the Social Security Act (42 U.S.C. 410(a)(5)) on or after the date of the enactment of this Act [Nov. 10, 1988].''

Amendment by section 8016(a)(3)(A), (4)(A), (C) of Pub. L. 100–647 effective Nov. 10, 1988, except that any amendment to a provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act [42 U.S.C. 301 et seq.], or to this title as added or amended by a provision of a particular Public Law which is so referred to, effective as though included or reflected in the relevant provisions of that Public Law at the time of its enactment, see section 8016(b) of Pub. L. 100–647, set out as a note under section 3111 of this title.

Pub. L. 100–647, title VIII, §8017(c), Nov. 10, 1988, 102 Stat. 3794, provided that: ''The amendments made by this section [amending this section and section 409 of Title 42, The Public Health and Welfare] shall take effect as if included in the amendments made by section 9002 of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IX, §9001(d), Dec. 22, 1987, 101 Stat. 1330–286, provided that: ''The amendments made by this section [amending this section and sections 409, 410, and 429 of Title 42, The Public Health and Welfare] shall apply with respect to remuneration paid after December 31, 1987.''

Pub. L. 100–203, title IX, §9002(c), Dec. 22, 1987, 101 Stat. 1330–287, provided that: ''The amendments made by this section [amending this section and section 409 of Title 42] shall apply with respect to remuneration for agricultural labor paid after December 31, 1987.''

Pub. L. 100–203, title IX, §9003(b), Dec. 22, 1987, 101 Stat. 1330–287, as amended by Pub. L. 100–647, title VIII, §8013(a), Nov. 10, 1988, 102 Stat. 3789, provided that: ''The amendments made by subsection (a) [amending this section and section 409 of Title 42] shall apply with respect to group-term life insurance coverage in effect after December 31, 1987, except that such amendments shall not apply with respect to payments by the employer (or a successor of such employer) for group-term life insurance for such employer's former employees who separated from employment with the employer on or before December 31, 1988, to the extent that such payments are not for coverage for any such employee for any period for which such employee is employed by such employer (or a successor of such employer) after the date of such separation.''

[Pub. L. 100–647, title VIII, §8013(b), Nov. 10, 1988, 102 Stat. 3790, provided that: ''The amendment made by subsection (a) [amending section 9003(b) of Pub. L. 100–203, set out above] shall apply as if such amendment had been included or reflected in section 9003(b) of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203] at the time of its enactment.'']

Pub. L. 100–203, title IX, §9004(c), Dec. 22, 1987, 101 Stat. 1330–288, provided that: ''The amendments made by this section [amending this section and section 410 of Title 42] shall apply with respect to to remuneration paid after December 31, 1987.''

Pub. L. 100–203, title IX, §9005(c), Dec. 22, 1987, 101 Stat. 1330–288, provided that: ''The amendments made by this section [amending this section and section 410 of Title 42] shall apply with respect to to remuneration paid after December 31, 1987.''

Amendment by section 9006(a), (b)(2) of Pub. L. 100–203 applicable with respect to tips received and wages paid on or after Jan. 1, 1988, see section 9006(c) of Pub. L. 100–203, set out as a note under section 3111 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 122(e)(1) of Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1108(g)(7) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1108(h) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1151(d)(2)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1983, see section 1151(k)(5) of Pub. L. 99–514, set out as a note under section 79 of this title.

Amendment by section 1882(c) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–514, title XVIII, §1895(b)(18)(C), Oct. 22, 1986, 100 Stat. 2935, provided that: ''The amendments made by this paragraph [amending this section and section 410 of Title 42, The Public Health and Welfare] shall apply to services performed after March 31, 1986.''

Amendment by Pub. L. 99–509, except as otherwise provided, effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of Title 42, see section 9002(d) of Pub. L. 99–509, set out as a note under section 418 of Title 42.

Amendment by section 12112(b) of Pub. L. 99–272 effective with respect to service performed after Dec. 31, 1983, see section 12112(c) of Pub. L. 99–272, set out as a note under section 409 of Title 42.

Pub. L. 99–272, title XIII, §13205(d)(1), Apr. 7, 1986, 100 Stat. 318, provided that: ''The amendments made by subsection (a) [amending this section and sections 1402, 3122, 3125, 6205, and 6413 of this title] shall apply to services performed after March 31, 1986.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–221 applicable to any return to performance of service in employ of United States, or of an instrumentality thereof, after 1983, see section 3(c) of Pub. L. 99–221, set out as a note under section 410 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 67(c) of Pub. L. 98–369 applicable to payments under agreements entered into or renewed after June 14, 1984, in taxable years ending after such date, with contracts entered into before June 15, 1984, which are amended after June 14, 1984, in any significant relevant aspect to be treated as a contract entered into after June 14, 1984, see section 67(e) of Pub. L. 98–369, set out as an Effective Date note under section 280G of this title.

Amendment by section 491(d)(36) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 531(d)(1)(A) of Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of this title.

Amendment by section 2601(b) of Pub. L. 98–369 effective with respect to service performed after Dec. 31, 1983, with enumerated exceptions, see section 2601(f) of Pub. L. 98–369, set out as a note under section 410 of Title 42, The Public Health and Welfare.

Amendment by section 2603(a)(2), (b) of Pub. L. 98–369 applicable to service performed after Dec. 31, 1983, see section 2603(e) of Pub. L. 98–369, set out as a note under section 410 of Title 42.

Pub. L. 98–369, div. B, title VI, §2661(*o*)(3), July 18, 1984, 98 Stat. 1159, provided that the amendment made by that section is effective Jan. 1, 1984.

Amendment by section 2663 of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of Title 42.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–21, title I, §101(d), Apr. 20, 1983, 97 Stat. 70, as amended by Pub. L. 98–369, div. B, title VI, §2662(a), July 18, 1984, 98 Stat. 1159, provided that: ''The amendments made by this section [amending this section and sections 409 and 410 of Title 42, The Public Health and Welfare] shall be effective with respect to service performed after December 31, 1983.''

Pub. L. 98–21, title I, §102(c), Apr. 20, 1983, 97 Stat. 71, provided that: ''The amendments made by the preceding provisions of this section [amending this section and section 410 of Title 42] shall be effective with respect to service performed after December 31, 1983 (but the provisions of sections 2 and 3 of Public Law 94–563 [set out below] and section 312(c) of Public Law 95–216 [set out below] shall continue in effect, to the extent applicable, as though such amendments had not been made).''

Amendment by section 321 of Pub. L. 98–21, applicable to agreements entered into after Apr. 20, 1983, except that at the election of any American employer such amendment shall also apply to any agreement entered into on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98–21 set out as a note under section 406 of this title.

Pub. L. 98–21, title III, §322(c), Apr. 20, 1983, 97 Stat. 121, provided that: ''The amendments made by this section [amending this section, section 1402 of this title, and sections 410 and 411 of Title 42, The Public Health and Welfare] shall be effective for taxable years beginning on or after the date of the enactment of this Act [Apr. 20, 1983].''

Pub. L. 98–21, title III, §323(c)(1), Apr. 20, 1983, 97 Stat. 121, provided that: ''The amendments made by subsection (a) [amending this section and section 410 of Title 42] shall apply to remuneration paid after December 31, 1983.''

Pub. L. 98–21, title III, §324(d), Apr. 20, 1983, 97 Stat. 125, as amended by Pub. L. 98–369, div. B, title VI, §2662(f)(2), July 18, 1984, 98 Stat. 1159; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Except as otherwise provided in this subsection, the amendments made by this section [amending this section, section 3306 of this title, and sections 403 and 409 of Title 42 and enacting provisions set out as a note under section 3306 of this title] shall apply to remuneration paid after December 31, 1983. For purposes of applying such amendments to remuneration paid after December 31, 1983, which would have been taken into account before January 1, 1984, if such amendments had applied to periods before January 1, 1984, such remuneration shall be taken into account when paid (or, at

the election of the payor, at the time which would be appropriate if such amendments had applied).

''(2) Except as otherwise provided in this subsection, the amendments made by subsection (b) [amending section 3306 of this title and enacting provisions set out as a note under section 3306 of this title] shall apply to remuneration paid after December 31, 1984. For purposes of applying such amendments to remuneration paid after December 31, 1984, which would have been taken into account before January 1, 1985, if such amendments had applied to periods before January 1, 1985, such remuneration shall be taken into account when paid (or, at the election of the payor, at the time which would be appropriate if such amendments had applied).

''(3) The amendments made by this section shall not apply to employer contributions made during 1984 and attributable to services performed during 1983 under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) if, under the terms of such arrangement as in effect on March 24, 1983—

''(A) the employee makes an election with respect to such contribution before January 1, 1984, and

''(B) the employer identifies the amount of such contribution before January 1, 1984.

In the case of the amendments made by subsection (b), the preceding sentence shall be applied by substituting '1985' for '1984' each place it appears and by substituting 'during 1984' for 'during 1983'.

''(4) In the case of an agreement in existence on March 24, 1983, between a nonqualified deferred compensation plan (as defined in section 3121(v)(2)(C) of the Internal Revenue Code of 1986, as added by this section) and an individual—

''(A) the amendments made by this section (other than subsection (b)) shall apply with respect to services performed by such individual after December 31, 1983, and

''(B) the amendments made by subsection (b) shall apply with respect to services performed by such individual after December 31, 1984.

The preceding sentence shall not apply in the case of a plan to which section 457(a) of such Code applies. For purposes of this paragraph, any plan or agreement to make payments described in paragraph (2), (3), or (13)(A)(iii) of section 3121(a) of such Code (as in effect on the day before the date of the enactment of this Act [Apr. 20, 1983]) shall be treated as a nonqualified deferred compensation plan.''

Pub. L. 98–21, title III, §327(d), Apr. 20, 1983, 97 Stat. 127, as amended by Pub. L. 98–369, div. B, title VI, §2662(g), July 18, 1984, 98 Stat. 1160; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendment made by subsection (a) [amending this section and section 409 of Title 42] shall apply to remuneration paid after December 31, 1983.

''(2) The amendments made by subsection (b) and subsection (c)(4) [amending this section, section 3306 of this title, and section 409 of Title 42] shall apply to remuneration (other than amounts excluded under section 119 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) paid after March 4, 1983, and to any such remuneration paid on or before such date which the employer treated as wages when paid.

''(3) The amendments made by paragraphs (1), (2), and (3) of subsection (c) [amending section 3306 of this title] shall apply to remuneration paid after December 31, 1984.''

Pub. L. 98–21, title III, §328(d), Apr. 20, 1983, 97 Stat. 128, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section, section 3306 of this title, and section 409 of Title 42] shall apply to remuneration paid after December 31, 1983.

''(2) The amendments made by subsection (c) [amending section 3306 of this title] shall apply to remuneration paid after December 31, 1984.''

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title II, §278(c)(1), Sept. 3, 1982, 96 Stat. 562, provided that: ''The amendments made by subsection (a) [amending this section and sections 1402 and 3122 of this title] shall apply to remuneration paid after December 31, 1982.''

EFFECTIVE DATE OF 1981 AMENDMENTS

Pub. L. 97–123, §3(g), Dec. 29, 1981, 95 Stat. 1663, provided that:

''(1) Except as provided in paragraph (2), this section (and the amendments made by this section) [amending this section, section 3231 of this title, and section 409 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 3101 of this title] shall apply to remuneration paid after December 31, 1981.

''(2) This section (and the amendments made by this section) shall not apply with respect to any payment made by a third party to an employee pursuant to a contractual relationship of an employer with such third party entered into before December 14, 1981, if—

''(A) coverage by such third party for the group in which such employee falls ceases before March 1, 1982, and

''(B) no payment by such third party is made to such employee under such relationship after February 28, 1982.''

Amendment by Pub. L. 97–34 applicable to remuneration paid after Dec. 31, 1981, see section 124(f) of Pub. L. 97–34, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Pub. L. 96–499, title XI, §1141(c), Dec. 5, 1980, 94 Stat. 2694, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section, section 3306 of this title, and section 409 of Title 42, The Public Health and Welfare] shall apply with respect to remuneration paid after December 31, 1980.

''(2) EXCEPTION FOR STATE AND LOCAL GOVERNMENTS.—

''(A) The amendments made by this section (insofar as they affect the application of section 218 of the Social Security Act [42 U.S.C. 418]) shall not apply to any payment made before January 1, 1984, by any governmental unit for positions of a kind for which all or a substantial portion of the social security employee taxes were paid by such governmental unit (without deduction from the remuneration of the employee) under the practices of such governmental unit in effect on October 1, 1980.

''(B) For purposes of subparagraph (A), the term 'social security employee taxes' means the amount required to be paid under section 218 of the Social Security Act [42 U.S.C. 418] as the equivalent of the taxes imposed by section 3101 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

''(C) For purposes of subparagraph (A), the term 'Governmental unit' means a State or political subdivision thereof within the meaning of section 218 of the Social Security Act [42 U.S.C. 418].''

Pub. L. 96–222, title I, §101(b)(1)(E), Apr. 1, 1980, 94 Stat. 205, provided that: ''The amendments made by subparagraph (B) of subsection (a)(10) [amending this section and section 3306 of this title] shall apply to payments made on or after January 1, 1979.''

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–600 applicable with respect to taxable years beginning after Dec. 31, 1978, see section 164(d) of Pub. L. 95–600, set out as an Effective Date note under section 127 of this title.

Pub. L. 95–472, §3(d), Oct. 17, 1978, 92 Stat. 1333, provided that: ''The amendments made by this section [amending this section, section 3306 of this title, and section 409 of Title 42, The Public Health and Welfare] shall apply with respect to taxable years beginning after December 31, 1976.''

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–216, title III, §312(h), Dec. 20, 1977, 91 Stat. 1535, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100

Stat. 2095, provided that: ''The amendments made by subsections (a), (b), (d), (e), (f), and (g) of this section [amending this section and provisions set out below] shall be effective as though they had been included as a part of the amendments made to section 3121(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by the first section of Public Law 94–563 (or, in the case of the amendments made by subsection (e), as a part of section 3 of such Public Law).''

Pub. L. 95–216, title III, § 314(c), Dec. 20, 1977, 91 Stat. 1536, provided that: ''The amendments made by this section [amending this section and section 3306 of this title] shall apply with respect to wages paid after December 31, 1978.''

Amendment by section 315(a) of Pub. L. 95–216 applicable with respect to wages paid with respect to employment performed in months after Dec. 1977, see section 315(c) of Pub. L. 95–216, set out as a note under section 3111 of this title.

Pub. L. 95–216, title III, § 356(e), Dec. 20, 1977, 91 Stat. 1556, provided that: ''The amendments made by this section [amending this section] shall apply with respect to remuneration paid and services rendered after December 31, 1977.''

EFFECTIVE DATE OF 1976 AMENDMENTS

Pub. L. 94–563, § 1(d), Oct. 19, 1976, 90 Stat. 2658, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and section 410 of Title 42, The Public Health and Welfare], shall apply with respect to services performed after 1950, to the extent covered by waiver certificates filed or deemed to have been filed under section 3121(k)(4) or (5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by such amendments).''

Pub. L. 94–455, title XII, § 1207(f)(4), Oct. 4, 1976, 90 Stat. 1708, as amended by Pub. L. 95–600, title VII, § 701(z)(1), Nov. 6, 1978, 92 Stat. 2921; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) The amendments made by paragraphs (1)(A) and (2)(A) of subsection (e) [amending this section and section 410 of Title 42, The Public Health and Welfare] shall apply to services performed after December 31, 1954. The amendments made by paragraphs (1)(B), (1)(C), and (2)(B) of such subsection [amending sections 1401 and 3401 of this title and section 411 of Title 42] shall apply to taxable years ending after December 31, 1954. The amendments made by paragraph (3) of such subsection [enacting section 6050A and amending section 6652 of this title] shall apply to calendar years beginning after the date of the enactment of this Act [Oct. 4, 1976].

''(B) Notwithstanding subparagraph (A), if the owner or operator of any boat treated a share of the boat's catch of fish or other aquatic animal life (or a share of the proceeds therefrom) received by an individual after December 31, 1954, and before the date of the enactment of this act [Oct. 4, 1976] for services performed by such individual after December 31, 1954, on such boat as being subject to the tax under chapter 21 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], then the amendments made by paragraphs (1)(A) and (B) and (2) of subsection (c) shall not apply with respect to such services performed by such individual (and the share of the catch, or the proceeds therefrom, received by him for such services).''

[Pub. L. 95–600, title VII, § 701(z)(2), Nov. 6, 1978, 92 Stat. 2921, provided that: ''The amendments made by paragraph (1) [amending section 1207(f)(4) of Pub. L. 94–455, set out above] shall take effect on October 4, 1976.'']

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

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of Title 42.

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by section 104(i) of Pub. L. 92–603 applicable only with respect to payments after 1974, see section 104(j) of Pub. L. 92–603, set out as a note under section 414 of Title 42, The Public Health and Welfare.

Amendment by sections 122(b) and 138(b) of Pub. L. 92–603 applicable in the case of any payment made after December 1972, see sections 122(c) and 138(c) of Pub. L. 92–603, set out as notes under section 409 of Title 42.

Amendment by section 128(b) of Pub. L. 92–603 applicable with respect to service performed on and after first day of calendar quarter which begins on or after Oct. 30, 1972, see section 128(c) of Pub. L. 92–603, set out as a note under section 410 of Title 42.

Amendment by section 129(a)(2) of Pub. L. 92–603 applicable to services performed after Dec. 31, 1972, see section 129(b) of Pub. L. 92–603, set out as a note under section 410 of Title 42.

Amendment by Pub. L. 92–336 applicable only with respect to remuneration paid after December 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of Title 42.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable only with respect to remuneration paid after December 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to tax returns the date prescribed by law for filing of which is after Dec. 31, 1969, see section 943(d) of Pub. L. 91–172, set out as a note under section 6651 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 108(b) of Pub. L. 90–248 applicable only with respect to remuneration paid after December 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Amendment by section 123(b) of Pub. L. 90–248 applicable with respect to services performed after Dec. 31, 1967, see section 123(c) of Pub. L. 90–248, set out as a note under section 410 of Title 42.

Pub. L. 90–248, title V, § 504(d), Jan. 2, 1968, 81 Stat. 935, provided that: ''The amendments made by this section [amending this section, section 3306 of this title, and section 409 of Title 42] shall apply with respect to remuneration paid after the date of the enactment of this Act [Jan. 2, 1968].''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 311(b)(4), (5) of Pub. L. 89–97 applicable only with respect to services performed after 1965, see section 311(c) of Pub. L. 89–97, set out as an Effective Date of 1965 Amendment note under section 410 of Title 42, The Public Health and Welfare.

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

Pub. L. 89–97, title III, § 316(a)(2), July 30, 1965, 79 Stat. 386, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply in the case of any certificate filed under section 3121(k)(1)(A) of such Code after the date of the enactment of this Act [July 30, 1965].''

Amendment by section 317 of Pub. L. 89–97 applicable with respect to services performed after quarter ending September 30, 1965, and after quarter in which Sec-

retary of the Treasury receives a certification from Commissioners of District of Columbia expressing their desire to have insurance system established by sections 401 et seq. and 1395c et seq. of Title 42 extended to the officers and employees coming under provisions of such amendments, see section 317(g) of Pub. L. 89–97, set out as a note under section 410 of Title 42.

Pub. L. 89–97, title III, § 320(c), July 30, 1965, 79 Stat. 394, provided that: ''The amendments made by subsections (a)(1) and (a)(3)(A) [amending sections 409 and 413 of Title 42], and the amendments made by subsection (b) (except paragraph (1) thereof) [amending this section and sections 3122, 3125, and 6413 of this title], shall apply only with respect to remuneration paid after December 1965. The amendments made by subsections (a)(2), (a)(3)(B), and (b)(1) [amending section 1402 of this title and sections 411 and 413 of Title 42] shall apply only with respect to taxable years ending after 1965. The amendment made by subsection (a)(4) [amending section 415 of Title 42] shall apply only with respect to calendar years after 1965.''

EFFECTIVE DATE OF 1964 AMENDMENTS

Pub. L. 88–650, § 4(d), Oct. 13, 1964, 78 Stat. 1078, provided that: ''The amendments made by this section [amending this section, section 3306 of this title, and section 409 of Title 42, The Public Health and Welfare] shall apply with respect to remuneration paid on or after the first day of the first calendar month which begins more than ten days after the date of the enactment of this Act [Oct. 13, 1964].''

Amendment by Pub. L. 88–272 applicable to remuneration paid after Dec. 31, 1962, see section 220(d) of Pub. L. 88–272, set out as an Effective Date note under section 406 of this title.

EFFECTIVE DATE OF 1961 AMENDMENTS

Pub. L. 87–293, title II, § 202(c), Sept. 22, 1961, 75 Stat. 627, provided that: ''The amendments made by subsections (a) and (b) of this section [amending this section, sections 3122 and 6051 of this title, and sections 405, 409, and 410 of Title 42, The Public Health and Welfare] shall apply with respect to service performed after the date of the enactment of this Act [Sept. 22, 1961]. In the case of any individual who is enrolled as a volunteer or volunteer leader under section 16(a) of this Act [section 2515(a) of Title 22, Foreign Relations and Intercourse] such amendments shall apply with respect to services performed on or after the effective date of such enrollment.'' [Section 202(c) of Pub. L. 87–293 repealed by Pub. L. 89–572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments contained in such provisions, see section 5(b) of Pub. L. 89–572, set out as a note under former section 2515 of Title 22.]

Pub. L. 87–256, title I, § 110(h)(3), Sept. 21, 1961, 75 Stat. 537, provided that: ''The amendments made by subsections (e) and (f) of this section [amending this section, section 3306 of this title, and section 410 of Title 42, The Public Health and Welfare] shall apply with respect to service performed after December 31, 1961.''

EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment by section 103(n) of Pub. L. 86–778 applicable only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by title II of the Social Security Act (42 U.S.C. 401 et seq.) extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by title II of the Social Security Act extended to the officers and employees of such Government and such political subdivisions and instrumentalities, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of Title 42, The Public Health and Welfare, and such amendment applicable only as expressly provided therein, see section 103(v)(2) of Pub. L. 86–778, set out as a note under section 402 of Title 42.

Amendment by section 103(*o*), (p) of Pub. L. 86–778 applicable only with respect to service performed after 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of Title 42.

Amendment by section 104(b) of Pub. L. 86–778 applicable only with respect to services performed after 1960, see section 104(c) of Pub. L. 86–778, set out as a note under section 410 of Title 42.

Pub. L. 86–624, § 18(k), July 12, 1960, 74 Stat. 416, provided that: ''The amendments contained in subsections (a) through (j) of this section [amending this section and sections 2202, 3306, 4221, 4233, 4262, 4502, 4774, 7653, and 7701 of this title] shall be effective as of August 21, 1959.''

Pub. L. 86–778, title I, § 105(d), Sept. 13, 1960, 74 Stat. 945, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendments made by subsection (a) [amending this section] shall apply only with respect to certificates filed under section 3121(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] after the date of the enactment of this Act [Sept. 13, 1960].

''(2) No monthly benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] for the month in which this Act is enacted or any prior month shall be payable or increased by reason of the provisions of subsections (b) and (c) of this section or the amendments made by such subsections [amending section 1402 of this title and enacting provisions set out as notes under this section and 1402 of this title], and no lump-sum death payment under such title shall be payable or increased by reason of such provisions or amendments in the case of any individual who died prior to the date of the enactment of this Act [Sept. 13, 1960].''

EFFECTIVE DATE OF 1959 AMENDMENTS

Amendment by Pub. L. 86–168 effective Jan. 1, 1960, see Pub. L. 86–168, title II, § 203(c), Aug. 18, 1959, 73 Stat. 390.

Pub. L. 86–70, § 22(i), June 25, 1959, 73 Stat. 147, provided that: ''The amendments contained in subsections (a) through (h) of this section [amending this section and sections 2202, 3306, 4221, 4233, 4262, 4502, 4774, 7621, 7653, and 7701 of this title] shall be effective as of January 3, 1959.''

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85–840, title IV, § 402(e), Aug. 28, 1958, 72 Stat. 1043, provided that: ''The amendments made by subsections (b) and (c) [amending this section and section 3122 of this title] shall be applicable only with respect to remuneration paid after 1958.''

Pub. L. 85–840, title IV, § 404(b), Aug. 28, 1958, 72 Stat. 1044, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to service performed after 1958.''

Pub. L. 85–840, title IV, § 405(c), Aug. 28, 1958, 72 Stat. 1047, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to certificates filed under section 3121(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] after the date of enactment of this Act [Aug. 28, 1958] and requests filed under subparagraph (F) of such section after such date.''

EFFECTIVE DATE OF 1956 AMENDMENT

Act Aug. 1, 1956, ch. 836, title II, § 201(m), 70 Stat. 843, as amended by act Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095, provided that:

''(1) The amendments made by subsection (a) [enacting section 3113 of this title] and paragraph (1) of subsection (h) [amending this section] shall apply with respect to remuneration paid after 1956. The amendment made by subsection (b) [amending this section] shall apply with respect to remuneration paid after October 1956. The amendments made by subsection (c) and paragraph (2) of subsection (h) [amending this section] shall apply with respect to service performed after 1956. The amendments made by paragraphs (1) and (2) of subsection (d) [amending this section] shall apply with respect to service with respect to which the amendments made by paragraphs (1) and (2) of subsection (b) of section 104 of this Act [amending section 410 of Title 42, The Public Health and Welfare] apply. The amendments made by paragraph (1) of subsection (e) [amending this section] shall apply with respect to service performed after 1954. The amendment made by paragraph (3) of such subsection shall [amending section 1402 of this title] apply with respect to taxable years ending after 1954. The amendments made by paragraph (2) of subsection (e) and by subsection (f) [amending section 1402 of this title] shall apply with respect to taxable years ending after 1955. The amendment made by subsection (i) [amending section 1402 of this title] shall apply with respect to taxable years ending on or after December 31, 1956. The amendment made by subsection (*l*) [amending this section] shall apply with respect to certificates filed after 1956 under section 3121(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

''(2)(A) Except as provided in subparagraph (B), the amendment made by subsection (g) [amending section 1402 of this title] shall apply only with respect to taxable years ending after 1956.

''(B) Any individual who, for a taxable year ending after 1954 and prior to 1957, had income which by reason of the amendment made by subsection (g) would have been included within the meaning of 'net earnings from self-employment' (as such term is defined in section 1402(a) of the Internal Revenue Code of 1986), if such income had been derived in a taxable year ending after 1956 by an individual who had filed a waiver certificate under section 1402(e) of such Code, may elect to have the amendment made by subsection (g) apply to his taxable years ending after 1954 and prior to 1957. No election made by any individual under this subparagraph shall be valid unless such individual has filed a waiver certificate under section 1402(e) of such Code prior to the making of such election or files a waiver certificate at the time he makes such election.

''(C) Any individual described in subparagraph (B) who has filed a waiver certificate under section 1402(e) of such Code prior to the date of enactment of this Act [Aug. 1, 1956], or who files a waiver certificate under such section on or before the due date of his return (including any extension thereof) for his last taxable year ending prior to 1957, must make such election on or before the due date of his return (including any extension thereof) for his last taxable year ending prior to 1957, or before April 16, 1957, whichever is the later.

''(D) Any individual described in subparagraph (B) who has not filed a waiver certificate under section 1402(e) of such Code on or before the due date of his return (including any extension thereof) for his last taxable year ending prior to 1957 must make such election on or before the due date of his return (including any extension thereof) for his first taxable year ending after 1956. Any individual described in this subparagraph whose period for filing a waiver certificate under section 1402(e) of such Code has expired at the time he makes such election may, notwithstanding the provisions of paragraph (2) of such section, file a waiver certificate at the time he makes such election.

''(E) An election under subparagraph (B) shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe by regulations. Notwithstanding the provisions of paragraph (3) of section 1402(e) of such Code, the waiver certificate filed by an individual who makes an election under subparagraph (B) (regardless of when filed) shall be effective for such individual's first taxable year ending after 1954 in which he had income which by reason of the amendment made by subsection (g) would have been included within the meaning of 'net earnings from self-employment' (as such term is defined in section 1402(a) of such Code), if such income had been derived in a taxable year ending after 1956 by an individual who had filed a waiver certificate under section 1402(e) of such Code, or for the taxable year prescribed by such paragraph (3) of section 1402(e), if such taxable year is earlier, and for all succeeding taxable years.

''(F) No interest or penalty shall be assessed or collected for failure to file a return within the time prescribed by law, if such failure arises solely by reason of an election made by an individual under subparagraph (B), or for any underpayment of the tax imposed by section 1401 of such Code arising solely by reason of such election, for the period ending with the date such individual makes an election under subparagraph (B).

''(3) Any tax under chapter 2 of the Internal Revenue Code of 1986 [section 1401 et seq. of this title] which is due, solely by reason of the enactment of subsection (f) [amending section 1402 of this title], or paragraph (2) of subsection (e), of this section [amending section 1402 of this title], for any taxable year ending on or before the date of the enactment of this Act [Aug. 1, 1956] shall be considered timely paid if payment is made in full on or before the last day of the sixth calendar month following the month in which this Act is enacted. In no event shall interest be imposed on the amount of any tax due under such chapter solely by reason of the enactment of subsection (f), or paragraph (2) of subsection (e), of this section for any period before the day after the date of enactment of this Act.

''(4) Any tax due under chapter 21 of the Internal Revenue Code of 1986 [this chapter] which is due, solely by reason of the enactment of subsection (d) [amending this section] and an effective date prescribed pursuant to paragraph (2)(B) or (2)(C) of section 104(i) [set out as a note under section 410 of Title 42, The Public Health and Welfare], for any calendar quarter beginning prior to the day on which the Secretary of Health, Education, and Welfare approves the plan which prescribes such effective date shall be considered timely paid if payment is made in full on or before the last day of the sixth calendar month following the month in which such plan is approved. In no event shall interest be imposed on the amount of any such tax due under such chapter for any period before the day on which the Secretary of Health, Education, and Welfare approves such plan.''

Amendment by act Aug. 1, 1956, ch. 837, effective Jan. 1, 1957, see act Aug. 1, 1956, ch. 837, title VI, § 603(a), 70 Stat. 887.

EFFECTIVE DATE OF 1954 AMENDMENT

Act Sept. 1, 1954, ch. 1206, title II, § 204(c), 68 Stat. 1091, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall be applicable only with respect to remuneration paid after 1954.''

Act Sept. 1, 1954, ch. 1206, title II, § 205(f), 68 Stat. 1092, provided that: ''The amendments made by subsections (c), (d), and (e) [amending this section] shall be applicable only with respect to services performed after 1954. The amendments made by subsections (a) and (b) [amending this section] shall be applicable only with respect to services (whether performed after 1954 or prior to 1955) for which the remuneration is paid after 1954.''

Act Sept. 1, 1954, ch. 1206, title II, § 206(b), 68 Stat. 1093, provided that: ''The amendment made by subsection (a) [amending this section] shall be applicable only with respect to services performed after 1954.''

REGULATIONS

Pub. L. 97–123, § 3(d), Dec. 29, 1981, 95 Stat. 1662, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The regulations prescribed under the last sentence of section 3121(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and the regulations prescribed under subparagraph (D) of section 3231(e)(4) of such Code, shall provide procedures under which, if (with respect to any employee) the third party promptly—

''(A) withholds the employee portion of the taxes involved,

''(B) deposits such portion under section 6302 of such Code, and

''(C) notifies the employer of the amount of the wages or compensation involved,

the employer (and not the third party) shall be liable for the employer portion of the taxes involved and for meeting the requirements of section 6051 of such Code (relating to receipts for employees) with respects to the wages or compensation involved.

''(2) For purposes of paragraph (1)—

''(A) the term 'employer' means the employer for whom services are normally rendered,

''(B) the term 'taxes involved' means, in the case of any employee, the taxes under chapters 21 and 22 which are payable solely by reason of the parenthetical matter contained in subparagraph (B) of section 3121(a)(2) of such Code, or solely by reason of paragraph (4) of section 3231(e) of such Code, and

''(C) the term 'wages or compensation involved' means, in the case of any employee, wages or compensation with respect to which taxes described in subparagraph (B) are imposed.''

REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 202(a)(1), (2) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, §5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under section 2515 of Title 22, Foreign Relations and Intercourse.

CONSTRUCTION OF 2018 AMENDMENT

Pub. L. 115–243, §2(c), Sept. 20, 2018, 132 Stat. 2895, provided that: ''Nothing in this Act [see Short Title of 2018 Amendment note set out under section 1305 of Title 42, The Public Health and Welfare] or the amendments made by this Act shall be construed to affect application of any Federal income tax withholding requirements under the Internal Revenue Code of 1986.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 3508 of Title 20, Education.

SUBVERSIVE ACTIVITIES CONTROL BOARD

The Subversive Activities Control Board was established by act Sept. 23, 1950, ch. 1024, §12, 64 Stat. 977 and ceased to operate June 30, 1973.

NO INFERENCE TO BE DRAWN FROM AMENDMENT BY PUB. L. 108–121

No inference to be drawn from amendment to subsec. (a)(18) of this section by section 106 of Pub. L. 108–121 with respect to tax treatment of any amounts under program described in section 134(b)(4) of this title for any taxable year beginning before Jan. 1, 2003, see section 106(d) of Pub. L. 108–121, set out as a note under section 134 of this title.

CLARIFICATION OF STANDARD TO BE USED IN DETERMINING EMPLOYMENT TAX STATUS OF SECURITIES BROKERS

Pub. L. 105–34, title IX, §921, Aug. 5, 1997, 111 Stat. 879, provided that:

''(a) IN GENERAL.—In determining for purposes of the Internal Revenue Code of 1986 whether a registered representative of a securities broker-dealer is an employee (as defined in section 3121(d) of the Internal Revenue Code of 1986), no weight shall be given to instructions from the service recipient which are imposed only in compliance with investor protection standards imposed by the Federal Government, any State government, or a governing body pursuant to a delegation by a Federal or State agency.

''(b) EFFECTIVE DATE.—Subsection (a) shall apply to services performed after December 31, 1997.''

TREATMENT OF CERTAIN UNIVERSITY ACCOUNTS

Pub. L. 104–188, title I, §1802, Aug. 20, 1996, 110 Stat. 1892, provided that:

''(a) IN GENERAL.—For purposes of subsection (s) of section 3121 of the Internal Revenue Code of 1986 (relating to concurrent employment by 2 or more employers)—

''(1) the following entities shall be deemed to be related corporations that concurrently employ the same individual:

''(A) a State university which employs health professionals as faculty members at a medical school, and

''(B) an agency account of a State university which is described in subparagraph (A) and from which there is distributed to such faculty members payments forming a part of the compensation that the State, or such State university, as the case may be, agrees to pay to such faculty members, but only if—

''(i) such agency account is authorized by State law and receives the funds for such payments from a faculty practice plan described in section 501(c)(3) of such Code and exempt from tax under section 501(a) of such Code,

''(ii) such payments are distributed by such agency account to such faculty members who render patient care at such medical school, and

''(iii) such faculty members comprise at least 30 percent of the membership of such faculty practice plan, and

''(2) remuneration which is disbursed by such agency account to any such faculty member of the medical school described in paragraph (1)(A) shall be deemed to have been actually disbursed by the State, or such State university, as the case may be, as a common paymaster and not to have been actually disbursed by such agency account.

''(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to remuneration paid after December 31, 1996.''

EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS

For purposes of this chapter, the term ''wages'' shall not include the amount of any refund required under section 421 of Pub. L. 100–360, 42 U.S.C. 1395b note, see section 10202 of Pub. L. 101–239, set out as a note under section 1395b of Title 42, The Public Health and Welfare.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514

or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

TREATMENT OF CERTAIN FAMILY SERVICES CARE PROVIDERS

Pub. L. 100–647, title VI, § 6305, Nov. 10, 1988, 102 Stat. 3756, provided that:

''(a) IN GENERAL.—A State may treat a person who renders dependent care or similar services as other than an employee [for] employment tax purposes for the applicable period if all of the following conditions are satisfied with respect to such person for such applicable period:

''(i) The person does not provide any dependent care or similar services in any facility owned or operated by the State.

''(ii) The person is compensated by the State for such services, directly or indirectly, out of funds provided pursuant to chapter 7 of title 42 of the United States Code [42 U.S.C. 301 et seq.], or the provisions and amendments made by the Family Security Act of 1988 [probably means the Family Support Act of 1988, Pub. L. 100–485, see Tables for classification].

''(iii) The State does not treat the person, with respect to the provision of dependent care or similar services, as an employee for employment tax purposes.

''(iv) The State files all Federal income tax returns (including information returns) required to be filed with respect to such person on a basis consistent with the State's treatment of such person as other than an employee beginning on the date of the enactment of this section [Nov. 10, 1988].

''(v) No more than ten percent of the State's employees are provided with insurance under title II of the Social Security Act [42 U.S.C. 401 et seq.] pursuant to voluntary agreements with the Secretary of Health and Human Services under section 218 of such title [42 U.S.C. 418].

''(b) STATE.—For purposes of this section, the term 'State' shall mean the government of the United States, District of Columbia, any State or political subdivision thereof, and any agency or instrumentality of any of the foregoing.

''(c) EMPLOYMENT TAX.—For purposes of this section, the term 'employment tax' means any tax imposed by subtitle C of the Internal Revenue Code of 1986.

''(d) APPLICABLE PERIOD.—For purposes of this section, the term 'applicable period' means the period beginning on January 1, 1984 and ending on December 31, 1990.

''(e) REPORT.—The Secretary of the Treasury shall report to the Senate Committee on Finance and the House Committee on Ways and Means on the text [tax] status of day care providers compensated pursuant to the program described in the section no later than December 31, 1989.''

[The due date for the report referred to in section 6305(e) of Pub. L. 100–647, set out above, extended to Jan. 1, 1992, by Pub. L. 101–508, title XI, § 11831(b), Nov. 5, 1990, 104 Stat. 1388–559.]

CERTAIN EMPLOYER PENSION CONTRIBUTIONS NOT INCLUDED IN FICA WAGE BASE

Pub. L. 100–647, title VIII, § 8018, Nov. 10, 1988, 102 Stat. 3794, provided that: ''In the case of any State (within the meaning of section 3121(e)(1) of the Internal Revenue Code of 1986) or political subdivision thereof which received a letter ruling of the Internal Revenue Service issued after December 31, 1983, and before the date of the enactment of this Act [Nov. 10, 1988] maintaining that any amount treated as an employer contribution under section 414(h)(2) of the Internal Revenue Code of 1986 is excluded from the definition of 'wages' for purposes of tax liability under section 3121(v)(1)(B) of such Code, such State or political subdivision shall be relieved of any liability for taxes under such section 3121(v)(1)(B) which, in good faith reliance on such letter ruling, were not paid and which would otherwise have been required to be paid (but for this section) on or before the earlier of the date of the enactment of this Act or the date of the receipt of a notice of revocation from the Internal Revenue Service of such letter ruling.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

FEDERAL LEGISLATIVE BRANCH EMPLOYEES; EXCLUSION OF CERTAIN RETIREMENT CONTRIBUTIONS FOR PURPOSES OF SUBSECTION (b)(5)(G)

Federal employees not to be deemed subject to Federal retirement system for purposes of subsec. (b)(5)(G) of this section if employees are contributing reduced amounts by reason of Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, see section 2601(c) of Pub. L. 98–369, set out as a note under section 410 of Title 42, The Public Health and Welfare.

SERVICE PERFORMED FOR NONPROFIT ORGANIZATIONS BY FEDERAL EMPLOYEES

For purposes of subsec. (b)(5) of this section as in effect in January 1983 and as in effect on and after January 1, 1984, service performed in the employ of a nonprofit organization described in section 501(c)(3) of this title by an employee who is required by law to be subject to subchapter III of chapter 83 of Title 5, Government Organization and Employees, with respect to such service, is considered to be service performed in the employ of an instrumentality of the United States, see section 2601(e) of Pub. L. 98–369, set out as a note under section 410 of Title 42, The Public Health and Welfare.

REFUNDS TO CHURCHES OR QUALIFIED CHURCH-CONTROLLED ORGANIZATIONS

Pub. L. 98–369, div. B, title VI, § 2603(f), July 18, 1984, 98 Stat. 1130, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In any case where a church or qualified church-controlled organization makes an election under section 3121(w) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the Secretary of the Treasury shall refund (without interest) to such church or organization any taxes paid under sections 3101 and 3111 of such Code with respect to service performed after December 31, 1983, which is covered under such election. The refund shall be conditional upon the church or organization agreeing to pay to each employee (or former employee) the portion of the

refund attributable to the tax imposed on such employee (or former employee) under section 3101, and such employee (or former employee) may not receive any other refund payment of such taxes.''

SOCIAL SECURITY COVERAGE OF RETIRED FEDERAL JUDGES ON ACTIVE DUTY

Pub. L. 98–118, § 4, Oct. 11, 1983, 97 Stat. 803, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Notwithstanding section 101(d) of the Social Security Amendments of 1983 [section 101(d) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note above], the amendments made by section 101(c) of such Act [amending this section and section 409 of Title 42, The Public Health and Welfare] shall apply only with respect to remuneration paid after December 31, 1985. Remuneration paid prior to January 1, 1986, under section 371(b) of title 28, United States Code, to an individual performing service under section 294 of such title, shall not be included in the term ''wages'' for purposes of section 209 of the Social Security Act [42 U.S.C. 409] or section 3121(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].''

TREATMENT OF CERTAIN MEDICAL FACULTY PRACTICE PLANS

Pub. L. 98–21, title I, § 125, Apr. 20, 1983, 97 Stat. 91, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—For purposes of subsection (s) of section 3121 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to concurrent employment by 2 or more employers)—

''(1) the following entities shall be deemed to be related corporations:

''(A) a State university which employs health professionals as faculty members at a medical school, and

''(B) a faculty practice plan described in section 501(c)(3) of such Code and exempt from tax under section 501(a) of such Code—

''(i) which employs faculty members of such medical school, and

''(ii) 30 percent or more of the employees of which are concurrently employed by such medical school; and

''(2) remuneration which is disbursed by such faculty practice plan to a health professional employed by both such entities shall be deemed to have been actually disbursed by such university as a common paymaster and not to have been actually disbursed by such faculty practice plan.

''(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to remuneration paid after December 31, 1983.''

WAIVER OF EXEMPTION BY NONPROFIT ORGANIZATION; TERMINATION OF CERTIFICATE PERIOD ON OR AFTER MARCH 31, 1983, PROHIBITED

Pub. L. 98–21, title I, § 102(d), Apr. 20, 1983, 97 Stat. 71, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The period for which a certificate is in effect under section 3121(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] may not be terminated under paragraph (1)(D) or (2) thereof on or after March 31, 1983; but no such certificate shall be effective with respect to any service to which the amendments made by this section [amending this section and section 410 of Title 42, The Public Health and Welfare] apply.''

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

Pub. L. 97–123, § 3(e), Dec. 29, 1981, 95 Stat. 1663, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of applying section 209 of the Social Security Act [section 409 of Title 42, The Public Health and Welfare], section 3121(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and section 3231(e) of such Code with respect to the parenthetical matter contained in section 209(b)(2) of the Social Security Act or section 3121(a)(2)(B) of the Internal Revenue Code of 1986, or with respect to section 3231(e)(4) of such Code (as the case may be), payments under a State temporary disability law shall be treated as remuneration for service.''

WAIVER OF EXEMPTION FROM SOCIAL SECURITY TAXES BY CERTAIN ORGANIZATIONS

Pub. L. 96–605, title IV, § 401, Dec. 28, 1980, 94 Stat. 3531, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) WAIVER CERTIFICATE.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, any waiver certificate filed by a qualified corporation (hereinafter in this section referred to as the 'corporation') under section 3121(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to waiver of exemption from social security taxes by certain organizations) shall be deemed not to be effective, for purposes of the taxes imposed by section 3101 of such Code, with respect to any wages—

''(A) paid by the Corporation to any employee thereof after December 31, 1972, and before April 1, 1975, if the Corporation furnishes to the Secretary of the Treasury or his delegate evidence reasonably satisfactory to him that the Corporation as refunded, prior to February 1, 1977, to such employee (or to his survivors or estate) the full amount of the taxes imposed by section 3101 of such Code on such wages, or

''(B) paid after March 31, 1975, and prior to July 1, 1977, by the Corporation to an individual as an employee of the Corporation, if the Corporation furnishes to the Secretary of the Treasury or his delegate evidence reasonably satisfactory to him that (i) such individual was not an employee of the Corporation on June 30, 1978, and (ii) no amount of the taxes imposed by section 3101 of such Code on such wages were withheld by the Corporation from such wages.

''(2) APPLICATION OF PARAGRAPH (1).—

''(A) EVIDENCE TO BE SUBMITTED TO SECRETARY.—The provisions of paragraph (1) shall not apply to wages described in subparagraph (A) or (B) of such paragraph unless, prior to the close of the one-year period which begins on the date of the enactment of this Act [Dec. 28, 1980], the Corporation furnishes to the Secretary of the Treasury or his delegate the evidence referred to in either such subparagraph.

''(B) TAX NOT IMPOSED.—If the provisions of paragraph (1) apply with respect to any wages paid by the Corporation to an employee thereof, no taxes imposed on such wages by section 3101 of the Internal Revenue Code of 1986 shall be payable, and no interest or penalty with respect to the imposition of taxes by such section on such wages (or with respect to the imposition of taxes by such section or section 3111 of such Code on any wages paid by the Corporation prior to January 1, 1978) shall be imposed or collected.

''(C) CREDIT AGAINST TAX.—Under regulations prescribed by the Secretary, there shall be allowed as a one-time credit against the tax imposed on the Corporation under section 3101 or 3111 of the Internal Revenue Code of 1986 (and any interest or penalties imposed thereon) an amount equal to the sum of—

''(i) all amounts of tax imposed by section 3101 of such Code which have been paid by the Corporation with respect to wages to which paragraph (1) applies, and

''(ii) all amounts paid by such Corporation as a penalty or as interest with respect to the tax imposed by section 3101 or 3111 of such Code on such wages.

''(b) TREATMENT FOR PURPOSES OF SOCIAL SECURITY ACT.—In the administration of titles II and XVIII of the Social Security Act [42 U.S.C. 401 et seq. and 1395 et

seq.], any wages paid to any individual to which the provisions of subsection (a) apply shall be treated as wages (within the meaning of section 209 of such Act) [42 U.S.C. 409] for purposes of determining—

''(1) entitlement to, or amount of, any insurance benefit payable to such individual or any other person on the basis of the wages and self-employment income of such individual, or

''(2) entitlement of such individual to benefits under title XVIII of such Act [42 U.S.C. 1395 et seq.] or entitlement of any other person to such benefits on the basis of the wages and self-employment income of such individual.

''(c) QUALIFIED CORPORATION DEFINED.—For purposes of this section, the term 'qualified corporation' means any corporation which—

''(1) filed a waiver certificate under section 3121 of the Internal Revenue Code of 1986 during 1968;

''(2) filed a second waiver certificate under such section during 1975 believing that no other waiver certificate had been filed;

''(3) received a refund of the taxes imposed by sections 3101 and 3111 of such Code with respect to certain wages paid to more than 120 but less than 180 employees who did not concur in the filing of the second waiver certificate; and

''(4) was notified during 1977 by the Internal Revenue Service that the certificate had been filed during 1968.

''(d) LIABILITY FOR TAXES.—Except as provided in subsection (a)(2)(C)(ii), nothing in this section shall be construed to relieve the Corporation of any liability for the payment of the taxes imposed by section 3111 of the Internal Revenue Code of 1986 with respect to any wages paid by it to any individual for any period.''

REFUND OR CREDIT OF TAXES TO NONPROFIT ORGANIZATIONS AFTER SEPT. 9, 1976, ON TAXES PAID UNDER SECTIONS 3101 or 3111; PROHIBITION; CONSTRUCTIVE FILING OF CERTIFICATE

Pub. L. 94–563, §2, Oct. 19, 1976, 90 Stat. 2658, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Notwithstanding any other provision of law, no refund or credit of any tax paid under section 3101 or 3111 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by an organization described in section 501(c)(3) of such Code which is exempt from income tax under section 501(a) of such Code shall be made on or after September 9, 1976, by reason of such organization's failure to file a waiver certificate under section 3121(k)(1) of such Code (or the corresponding provision of prior law), if such organization is deemed to have filed such a certificate under section 3121(k)(4) of such Code (as added by the first section of this Act).''

REMUNERATION FOR SERVICES DEEMED TO CONSTITUTE EMPLOYMENT; SERVICES FOR ORGANIZATIONS DEEMED TO HAVE FILED CERTIFICATES UNDER SUBSECTION (k)(4) OF THIS SECTION

Pub. L. 95–216, title III, §312(c), Dec. 20, 1977, 91 Stat. 1533, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In any case where—

''(1) an individual performed service, as an employee of an organization which is deemed under section 3121(k)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to have filed a waiver certificate under section 3121(k)(1) of such Code, on or after the first day of the applicable period described in subparagraph (A)(ii) of such section 3121(k)(4) and before July 1, 1977; and

''(2) the service so performed does not constitute employment (as defined in section 210(a) of the Social Security Act [42 U.S.C. 410(a)] and section 3121(b) of such Code) because the waiver certificate which the organization is deemed to have filed is made inapplicable to such service by section 3121(k)(4)(C) of such Code, but would constitute employment (as so defined) in the absence of such section 3121(k)(4)(C),

the remuneration paid for such service shall, upon the request of such individual (filed on or before April 15, 1980, in such manner and form, and with such official, as may be prescribed by regulations made under title II of the Social Security Act [42 U.S.C. 401 et seq.]) accompanied by full payment of all of the taxes which would have been paid under section 3101 of such Code with respect to such remuneration but for such section 3121(k)(4)(C) (or by satisfactory evidence that appropriate arrangements have been made for the payment of such taxes in installments as provided in section 3121(k)(8) of such Code), be deemed to constitute remuneration for employment as so defined. In any case where remuneration paid by an organization to an individual is deemed under the preceding sentence to constitute remuneration for employment, such organization shall be liable (notwithstanding any other provision of such Code) for payment of the taxes which it would have been required to pay under section 3111 of such Code with respect to such remuneration in the absence of such section 3121(k)(4)(C).''

REMUNERATION FOR SERVICES DEEMED TO CONSTITUTE EMPLOYMENT; SERVICES FOR ORGANIZATIONS DEEMED TO HAVE FILED CERTIFICATES UNDER SUBSECTION (k)(5) OF THIS SECTION

Pub. L. 94–563, §3, Oct. 19, 1976, 90 Stat. 2658, as amended by Pub. L. 95–216, title III, §312(e), Dec. 20, 1977, 91 Stat. 1535; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In any case where—

''(1) an individual performed service, as an employee of an organization which is deemed under section 3121(k)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to have filed a waiver certificate under section 3121(k)(1) of such Code, at any time prior to the period for which such certificate is effective;

''(2) the taxes imposed by sections 3101 and 3111 of such Code were paid with respect to remuneration paid for such service, but such service (or any part thereof) does not constitute employment (as defined in section 210(a) of the Social Security Act [42 U.S.C. 410(a)] and section 3121(b) of such Code because the applicable taxes so paid were refunded or credited (otherwise than through a refund or credit which would have been allowed if a valid waiver certificate filed under section 3121(k)(1) of such Code had been in effect) prior to September 9, 1976; and

''(3) any portion of such service (with respect to which taxes were paid and refunded or credited as described in paragraph (2)) would constitute employment (as so defined) if the organization had actually filed under section 3121(k)(1) of such Code a valid waiver certificate effective as provided in section 3121(k)(5)(B) thereof (with such individual's signature appearing on the accompanying list),

the remuneration paid for the portion of such service described in paragraph (3) shall, upon the request of such individual (filed on or before April 15, 1980, in such manner and form, and with such official, as may be prescribed by regulations made under title II of the Social Security Act [42 U.S.C. 401 et seq.]) accompanied by full repayment of the taxes which were paid under section 3101 of such Code with respect to such remuneration and so refunded or credited (or by satisfactory evidence that appropriate arrangements have been made for the repayment of such taxes in installments as provided in section 3121(k)(8) of such Code), be deemed to constitute remuneration for employment as so defined. In any case where remuneration paid by an organization to an individual is deemed under the preceding sentence to constitute remuneration for employment, such organization shall be liable (notwithstanding any other provision of such Code) for repayment of any taxes which it paid under section 3111 of such Code with respect to such remuneration and which were refunded or credited to it.''

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS PRIOR TO FILING OF WAIVER CERTIFICATE

Pub. L. 86–778, title I, §105(b)(1)–(5), Sept. 13, 1960, 74 Stat. 943, 944, as amended by Pub. L. 89–97, title III,

§ 316(c)(1), July 30, 1965, 79 Stat. 386; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) If—

''(A) an individual performed service in the employ of an organization with respect to which remuneration was paid before the first day of the calendar quarter in which the organization filed a waiver certificate pursuant to section 3121(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and such service is excepted from employment under section 210(a)(8)(B) of the Social Security Act [42 U.S.C. 410(a)(8)(B)],

''(B) such service would have constituted employment as defined in section 210 of such Act [42 U.S.C. 410] if the requirements of section 3121(k)(1) of such Code were satisfied,

''(C) such organization paid, on or before the due date of the tax return for the calendar quarter before the calendar quarter in which the organization filed a certificate pursuant to section 3121(k)(1) of such Code, any amount, as taxes imposed by sections 3101 and 3111 of such Code with respect to such remuneration paid by the organization to the individual for such service,

''(D) such individual, or a fiduciary acting for such individual or his estate, or his survivor (within the meaning of section 205(c)(1)(C) of such Act [42 U.S.C. 405(c)(1)(C)]), requests that such remuneration be deemed to constitute remuneration for employment for purposes of title II of such Act [42 U.S.C. 401 et seq.], and

''(E) the request is made in such form and manner, and with such official, as may be prescribed by regulations made by the Secretary of Health, Education, and Welfare,

then, subject to the conditions stated in paragraphs (2), (3), (4), and (5), the remuneration with respect to which the amount has been paid as taxes shall be deemed to constitute remuneration for employment for purposes of title II of such Act [42 U.S.C. 401 et seq.].

''(2) Paragraph (1) shall not apply with respect to an individual unless the organization referred to in paragraph (1)(A), on or before the date on which the request described in paragraph (1) is made, has filed a certificate pursuant to section 3121(k)(1) of such Code.

''(3) Paragraph (1) shall not apply with respect to an individual who is employed by the organization referred to in paragraph (2) on the date the certificate is filed.

''(4) If credit or refund of any portion of the amount referred to in paragraph (1)(C) (other than a credit or refund which would be allowed if the service constituted employment for purposes of chapter 21 of such Code) has been obtained, paragraph (1) shall not apply with respect to the individual unless the amount credited or refunded (including any interest under section 6611 of such Code) is repaid before January 1, 1968, or, if later, the first day of the third year after the year in which the organization filed a certificate pursuant to section 3121(k)(1) of such Code.

''(5) Paragraph (1) shall not apply to any service performed for the organization in a period for which a certificate filed pursuant to section 3121(k)(1) of such Code is not in effect.''

[Pub. L. 89–97, title III, § 316(c)(2), July 30, 1965, 79 Stat. 387, provided that: ''The amendment made by paragraph (1) [amending section 105(b) of Pub. L. 86–778, set out above] shall take effect on the date of the enactment of this Act [July 30, 1965]. The provisions of section 105(b) of the Social Security Amendments of 1960 [section 105(b) of Pub. L. 86–778] which were in effect before the date of the enactment of this Act [July 30, 1965] shall be applicable with respect to any request filed under section 105(b)(1) of such Amendments before such date. Nothing in the preceding sentence shall prevent the filing of a request under section 105(b)(1) of such Amendments as amended by this Act.'']

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS FOR WHICH REMUNERATION WAS PAID BEFORE JULY 30, 1965, BUT AFTER FILING OF WAIVER CERTIFICATE

Pub. L. 89–97, title III, § 316(d), July 30, 1965, 79 Stat. 387, provided that where an individual performed service for which remuneration was paid before July 30, 1965, by an organization which, before such date, filed a waiver certificate pursuant to subsec. (k)(1) of this section, then under certain conditions, the remuneration paid with respect to such service was to be deemed remuneration for employment for purposes of title II of the Social Security Act, sections 401 et seq, of Title 42, The Public Health and Welfare, even though normally excluded from employment under title II of the Social Security Act.

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS PERFORMED AFTER 1950 AND PRIOR TO JULY 1, 1960

Pub. L. 86–778, title I, § 105(b)(1)–(5), Sept. 13, 1960, 74 Stat. 943, 944, provided that where an individual performed service in the employ of an organization after 1950 with respect to which remuneration was paid before 1960 and such service is normally excepted from employment under title II of the Social Security Act (42 U.S.C. 401 et seq.), then under certain conditions, the remuneration paid with respect to such service was to be deemed remuneration for employment for purposes of title II of the Social Security Act.

SERVICE FOR CERTAIN TAX-EXEMPT ORGANIZATIONS PERFORMED AFTER 1950 AND PRIOR TO 1957

Act Sept. 1, 1954, ch. 1206, title IV, § 403, 68 Stat. 1098, as amended by acts Aug. 1, 1956, ch. 836, title IV, § 401, 70 Stat. 855; Aug. 27, 1958, Pub. L. 85–785, §§ 1–3, 72 Stat. 938, provided that where an individual has been employed after 1950 and before Aug. 1, 1956, by an organization exempt from income tax under section 501(c)(3) of this title but which did not have in effect during the individual's period of employment a valid waiver certificate, or, which failed to have the individual's signature appear on the list of signatures of employees who concurred in the filing of such certificate, where one was in effect, and the service performed by the individual would have constituted employment for purposes of title II of the Social Security Act (42 U.S.C. 401 et seq.) had such requirements been met, then under certain conditions, the remuneration paid was to be deemed remuneration for employment for purposes of title II of the Social Security Act.

Executive Documents

TRANSFER OF FUNCTIONS

Functions of Public Health Service, of Surgeon General of Public Health Service, and of all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

Coast and Geodetic Survey consolidated with National Weather Bureau in 1965 to form Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. Commissioned Officer Corps of Environmental Science Services Administration changed to Commissioned Officer Corps of National Oceanic and Atmospheric Administration, see 1970 Reorg. Plan No. 4, § 4(d), eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5.

LINE ITEM VETO

Pub. L. 105–34, title IX, § 968, Aug. 5, 1997, 111 Stat. 895, amending this section and enacting provisions set out

as a note above, was subject to line item veto by the President, Cancellation No. 97–2, signed Aug. 11, 1997, 62 F.R. 43267, Aug. 12, 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).

§ 3122. Federal service

In the case of the taxes imposed by this chapter with respect to service performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, including such service which is medicare qualified government employment (as defined in section 3121(u)(3)), including service, performed as a member of a uniformed service, to which the provisions of section 3121(m)(1) are applicable, and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable, the determination of the amount of remuneration for such service, and the return and payment of the taxes imposed by this chapter, shall be made by the head of the Federal agency or instrumentality having the control of such service, or by such agents as such head may designate. In the case of the taxes imposed by this chapter with respect to service performed in the employ of an international organization pursuant to a transfer to which the provisions of section 3121(y) are applicable, the determination of the amount of remuneration for such service, and the return and payment of the taxes imposed by this chapter, shall be made by the head of the Federal agency from which the transfer was made. Nothing in this paragraph shall be construed to affect the Secretary's authority to determine under subsections (a) and (b) of section 3121 whether any such service constitutes employment, the periods of such employment, and whether remuneration paid for any such service constitutes wages. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to such service without regard to the contribution and benefit base limitation in section 3121(a)(1), and he shall not be required to obtain a refund of the tax paid under section 3111 on that part of the remuneration not included in wages by reason of section 3121(a)(1). Payments of the tax imposed under section 3111 with respect to service, performed by an individual as a member of a uniformed service, to which the provisions of section 3121(m)(1) are applicable, shall be made from appropriations available for the pay of members of such uniformed service. The provisions of this section shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of this section the Secretary of Defense shall be deemed to be the head of such instrumentality. The provisions of this section shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of the Department in which the Coast Guard is operating, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of this section the Secretary of the Department in which the Coast Guard is operating shall be deemed to be the head of such instrumentality.

(Aug. 16, 1954, ch. 736, 68A Stat. 428; Sept. 1, 1954, ch. 1206, title II, §§ 202(c), 203(a), 68 Stat. 1090; Aug. 1, 1956, ch. 837, title IV, § 411(b), (c), 70 Stat. 879; Pub. L. 85–840, title IV, § 402(c), Aug. 28, 1958, 72 Stat. 1042; Pub. L. 85–866, title I, § 70, Sept. 2, 1958, 72 Stat. 1660; Pub. L. 87–293, title II, § 202(a)(3), Sept. 22, 1961, 75 Stat. 626; Pub. L. 89–97, title III, § 320(b)(3), July 30, 1965, 79 Stat. 393; Pub. L. 90–248, title I, § 108(b)(3), Jan. 2, 1968, 81 Stat. 835; Pub. L. 92–5, title II, § 203(b)(3), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92–236, § 203(b)(3), July 1, 1972, 86 Stat. 419; Pub. L. 93–66, § 203(b)(3), (d), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, § 5(b)(3), (d), Dec. 31, 1973, 87 Stat. 954; Pub. L. 94–455, title XIX, § 1903(a)(4), Oct. 4, 1976, 90 Stat. 1807; Pub. L. 97–248, title II, § 278(a)(3), Sept. 3, 1982, 96 Stat. 560; Pub. L. 99–272, title XIII, § 13205(a)(2)(C), Apr. 7, 1986, 100 Stat. 315; Pub. L. 100–647, title VIII, § 8015(a)(2), Nov. 10, 1988, 102 Stat. 3791; Pub. L. 101–508, title XI, § 11331(d)(2), Nov. 5, 1990, 104 Stat. 1388–468; Pub. L. 103–66, title XIII, § 13207(d)(4), Aug. 10, 1993, 107 Stat. 468; Pub. L. 103–296, title III, § 319(a)(2), Aug. 15, 1994, 108 Stat. 1534; Pub. L. 109–241, title IX, § 902(i), July 11, 2006, 120 Stat. 567.)

Editorial Notes

References in Text

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

Amendments

2006—Pub. L. 109–241 substituted ''Secretary of the Department in which the Coast Guard is operating'' for ''Secretary of Transportation'' in two places.

1994—Pub. L. 103–296 inserted after first sentence ''In the case of the taxes imposed by this chapter with respect to service performed in the employ of an international organization pursuant to a transfer to which the provisions of section 3121(y) are applicable, the determination of the amount of remuneration for such service, and the return and payment of the taxes imposed by this chapter, shall be made by the head of the Federal agency from which the transfer was made.''

1993—Pub. L. 103–66 substituted ''contribution and benefit base limitation'' for ''applicable contribution base limitation''.

1990—Pub. L. 101–508 substituted ''applicable contribution base limitation'' for ''contribution and benefit base limitation''.

1988—Pub. L. 100–647 struck out from first sentence ''the determination whether an individual has performed service which constitutes employment as de-

fined in section 3121(b),'' after ''section 3121(p) are applicable,'' and ''which constitutes wages as defined in section 3121(a)'' after ''remuneration for such service'', and inserted after first sentence ''Nothing in this paragraph shall be construed to affect the Secretary's authority to determine under subsections (a) and (b) of section 3121 whether any such service constitutes employment, the periods of such employment, and whether remuneration paid for any such service constitutes wages.''

1986—Pub. L. 99–272 substituted ''including such service which is medicare qualified government employment (as defined in section 3121(u)(3))'' for ''including service which is medicare qualified Federal employment (as defined in section 3121(u)(2))''.

1982—Pub. L. 97–248 inserted ''including service which is medicare qualified Federal employment (as defined in section 3121(u)(2)),''.

1976—Pub. L. 94–455 substituted ''Secretary of Transportation'' for ''Secretary'' in two places.

1973—Pub. L. 93–233, § 5(b)(3), effective with respect to remuneration paid after 1973, substituted ''$13,200'' for ''$12,600''.

Pub. L. 93–233, § 5(d), applicable only with respect to remuneration paid after, and taxable year beginning after, 1973 (as provided in section 5(e) of Pub. L. 93–233, set out as a note under section 409 of Title 42), amended section 203(b)(3)(C) of Pub. L. 92–336 (set out as 1973 Amendment note hereunder) substituting ''$13,200'' for ''$12,600''.

Pub. L. 93–66, § 203(b)(3), effective with respect to remuneration paid after 1973, substituted ''$12,600'' for ''$12,000''.

Pub. L. 93–66, § 203(d), applicable only with respect to remuneration paid after, and taxable years beginning after, 1973 (as provided in section 203(e) of Pub. L. 93–66, set out as a note under section 409 of Title 42), amended section 203(b)(3)(C) of Pub. L. 92–336 (set out as 1972 Amendment note hereunder) substituting ''$12,600'' for ''$12,000''.

1972—Pub. L. 92–336, § 203(b)(3)(A), substituted ''$10,800'' for ''$9,000''.

Pub. L. 92–336, § 203(b)(3)(B), effective with respect to remuneration paid after 1973, substituted ''$12,000'' for ''$10,800''.

Pub. L. 92–336, § 203(b)(3)(C), effective with respect to remuneration paid after 1974, substituted ''contribution and benefit base'' for ''$12,000''.

1971—Pub. L. 92–5 substituted ''$9,000'' for ''$7,800''.

1968—Pub. L. 90–248 substituted ''$7,800'' for ''$6,600'' in second sentence.

1965—Pub. L. 89–97 substituted ''$6,600'' for ''$4,800''.

1961—Pub. L. 87–293 inserted ''and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable,'' after ''section 3121(m)(1) are applicable,''.

1958—Pub. L. 85–866 substituted ''section'' for ''subsection'' wherever appearing.

Pub. L. 85–840 substituted ''$4,800'' for $4,200''.

1956—Act Aug. 1, 1956, included taxes with respect to service, performed as a member of a uniformed service, to which provisions of section 3121(m)(1) of this title are applicable, and authorized payment of tax imposed under section 3111 of this title from appropriations available for pay of members of the uniformed service.

1954—Act Sept. 1, 1954, § 202(c), substituted ''$4,200'' for ''$3,600''.

Act Sept. 1, 1954, § 203(a), inserted provisions making section applicable to services performed by a civilian employee in the Coast Guard Exchanges or certain other activities at Coast Guard installations.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to 1994 and later calendar years, see section 13207(e) of Pub. L. 103–66, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to 1991 and later calendar years, see section 11331(e) of Pub. L. 101–508, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title VIII, § 8015(a)(3), Nov. 10, 1988, 102 Stat. 3791, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 405 of Title 42, The Public Health and Welfare] shall apply to determinations relating to service commenced in any position on or after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 applicable to services performed after Mar. 31, 1986, see section 13205(d)(1) of Pub. L. 99–272, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to remuneration paid after Dec. 31, 1982, see section 278(c)(1) of Pub. L. 97–248, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of Title 42.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–336 applicable only with respect to remuneration paid after December 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable only with respect to remuneration paid after December 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 applicable only with respect to remuneration paid after December 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–97 applicable with respect to remuneration paid after December, 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–293 applicable with respect to service performed after Sept. 22, 1961, but in the case

of persons serving under the Peace Corps agency established by executive order applicable with respect to service performed on or after the effective date of enrollment, see section 202(c) of Pub. L. 87–293, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–840 applicable only with respect to remuneration paid after 1958, see section 402(e) of Pub. L. 85–840, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, effective Jan. 1, 1956, see act Aug. 1, 1956, ch. 837, title VI, § 603(a), 70 Stat. 887.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 202(c) of act Sept. 1, 1954, applicable only with respect to remuneration paid after 1954, see section 202(d) of act Sept. 1, 1954, set out as a note under section 1401 of this title.

Act Sept. 1, 1954, ch. 1206, title II, § 203(b), 68 Stat. 1091, provided that: ''The amendment made by subsection (a) [amending this section] shall become effective January 1, 1955.''

REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENT UNAFFECTED

Section 202(a)(3) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under section 2515 of Title 22, Foreign Relations and Intercourse.

§ 3123. Deductions as constructive payments

Whenever under this chapter or any act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

(Aug. 16, 1954, ch. 736, 68A Stat. 429.)

§ 3124. Estimate of revenue reduction

The Secretary at intervals of not longer than 3 years shall estimate the reduction in the amount of taxes collected under this chapter by reason of the operation of section 3121(b)(9) and shall include such estimate in his annual report.

(Aug. 16, 1954, ch. 736, 68A Stat. 429; Sept. 1, 1954, ch. 1206, title II, § 205(b), 68 Stat. 1091; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

Editorial Notes

AMENDMENTS

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1954—Act Sept. 1, 1954, substituted ''section 3121(b)(9)'' for ''section 3121(b)(10)''.

§ 3125. Returns in the case of governmental employees in States, Guam, American Samoa, and the District of Columbia

(a) States

Except as otherwise provided in this section, in the case of the taxes imposed by sections 3101(b) and 3111(b) with respect to service performed in the employ of a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby), the return and payment of such taxes may be made by the head of the agency or instrumentality having the control of such service, or by such agents as such head may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the contribution and benefit base limitation in section 3121(a)(1).

(b) Guam

The return and payment of the taxes imposed by this chapter on the income of individuals who are officers or employees of the Government of Guam or any political subdivision thereof or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, and those imposed on such Government or political subdivision or instrumentality with respect to having such individuals in its employ, may be made by the Governor of Guam or by such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the contribution and benefit base limitation in section 3121(a)(1).

(c) American Samoa

The return and payment of the taxes imposed by this chapter on the income of individuals who are officers or employees of the Government of American Samoa or any political subdivision thereof or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, and those imposed on such Government or political subdivision or instrumentality with respect to having such individuals in its employ, may be made by the Governor of American Samoa or by such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the contribution and benefit base limitation in section 3121(a)(1).

(d) District of Columbia

In the case of the taxes imposed by this chapter with respect to service performed in the employ of the District of Columbia or in the employ of any instrumentality which is wholly owned thereby, the return and payment of the taxes may be made by the Mayor of the District of Columbia or such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed by section 3111 with respect to such service without regard to the contribution and benefit base limitation in section 3121(a)(1).

(Added Pub. L. 86–778, title I, §103(q)(1), Sept. 13, 1960, 74 Stat. 939; amended Pub. L. 89–97, title III, §§317(c)(1), (2), 320(b)(4), July 30, 1965, 79 Stat. 389, 393; Pub. L. 90–248, title I, §108(b)(4), Jan. 2, 1968, 81 Stat. 835; Pub. L. 92–5, title II, §203(b)(4), Mar. 17, 1971, 85 Stat. 11; Pub. L. 92–336, title II, §203(b)(4), July 1, 1972, 86 Stat. 419; Pub. L. 93–66, title II, §203(b)(4), (d), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, §5(b)(4), (d), Dec. 31, 1973, 87 Stat. 954; Pub. L. 94–455, title XIX, §1903(a)(5), Oct. 4, 1976, 90 Stat. 1807; Pub. L. 99–272, title XIII, §13205(a)(2)(A)(i), (ii), Apr. 7, 1986, 100 Stat. 315; Pub. L. 101–508, title XI, §11331(d)(2), Nov. 5, 1990, 104 Stat. 1388–468; Pub. L. 103–66, title XIII, §13207(d)(4), Aug. 10, 1993, 107 Stat. 468.)

Editorial Notes

PRIOR PROVISIONS

A prior section 3125 was renumbered section 3128 of this title.

AMENDMENTS

1993—Pub. L. 103–66 which directed the amendment of this section by substituting ''contribution and benefit base limitation'' for ''applicable contribution base limitation'' without specifying where the substitution was to be made, was executed by making the substitution in subsecs. (a) to (d) to reflect the probable intent of Congress.

1990—Pub. L. 101–508 substituted ''applicable contribution base limitation'' for ''contribution and benefit base limitation'' in subsecs. (a) to (d).

1986—Pub. L. 99–272 inserted ''States'' in section catchline, added subsec. (a), and redesignated former subsecs. (a) to (c) as (b) to (d), respectively.

1976—Subsec. (c). Pub. L. 94–455 substituted ''Mayor of the District of Columbia or such agents as he may designate'' for ''Commissioners of the District of Columbia or such agents as they may designate''.

1973—Pub. L. 93–233, §5(b)(4), effective with respect to remuneration paid after 1973, substituted ''$13,200'' for ''$12,600'' wherever appearing.

Pub. L. 93–233, §5(d), applicable only with respect to remuneration paid after, and taxable years beginning after, 1973 (as provided in section 5(e) of Pub. L. 93–233, set out as a note under section 409 of Title 42), amended section 203(b)(4)(C) of Pub. L. 92–336 (set out as 1973 Amendment note hereunder) substituting ''$13,200'' for ''$12,600''.

Pub. L. 93–66, §203(b)(4), effective with respect to remuneration paid after 1973, substituted ''$12,600'' for ''$12,000'' wherever appearing.

Pub. L. 93–66, §203(d), applicable only with respect to remuneration paid after, and taxable years beginning after, 1973 (as provided in section 203(e) of Pub. L. 93–66, set out as a note under section 409 of Title 42), amended section 203(b)(4)(C) of Pub. L. 92–336 (set out as 1972 Amendment note hereunder) substituting ''$12,600'' for ''$12,000''.

1972—Pub. L. 92–336, §203(b)(4)(A), substituted ''$10,800'' for ''$9,000'' wherever appearing.

Pub. L. 92–336, §203(b)(4)(B), effective with respect to remuneration paid after 1973, substituted ''$12,000'' for ''$10,800'' wherever appearing.

Pub. L. 92–336, §203(b)(4)(C), effective with respect to remuneration paid after 1974, substituted ''contribution and benefit base'' for ''$12,000''.

1971—Pub. L. 92–5 substituted ''$9,000'' for ''$7,800'' wherever appearing.

1968—Pub. L. 90–248 substituted ''$7,800'' for ''$6,600'' wherever appearing.

1965—Subsecs. (a), (b). Pub. L. 89–97, §320(b)(4), substituted ''$6,600'' for ''$4,800''.

Subsec. (c). Pub. L. 89–97, §317(c)(1), added subsec. (c) and inserted reference to District of Columbia in section catchline.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to 1994 and later calendar years, see section 13207(e) of Pub. L. 103–66, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to 1991 and later calendar years, see section 11331(e) of Pub. L. 101–508, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 applicable to services performed after Mar. 31, 1986, see section 13205(d)(1) of Pub. L. 99–272, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of Title 42.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–336 applicable only with respect to remuneration paid after December 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable only with respect to remuneration paid after December 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 applicable only with respect to remuneration paid after December 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 317(c)(1), (2) of Pub. L. 89–97 applicable with respect to services performed after quarter ending September 30, 1965, and after quarter in which Secretary of the Treasury receives a certification from Commissioners of District of Columbia expressing their desire to have insurance system established by section 401 et seq. and 1395c et seq. of Title 42, The Public Health and Welfare, extended to officers and employees coming under provisions of such amendments, see section 317(g) of Pub. L. 89–97, set out as a note under section 410 of Title 42.

Amendment by section 320(b)(4) of Pub. L. 89–97 applicable with respect to remuneration paid after December 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of this title.

EFFECTIVE DATE

Section applicable only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by title II of the Social Security Act (42 U.S.C. 401 et seq.) extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government

of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by title II of the Social Security Act extended to the officers and employees of such Government and such political subdivisions and instrumentalities, see section 103(v)(1) of Pub. L. 86–778, set out as an Effective Date of 1960 Amendment note under section 402 of Title 42, The Public Health and Welfare.

§ 3126. Return and payment by governmental employer

If the employer is a State or political subdivision thereof, or an agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages under section 3101 and the amount of the tax imposed by section 3111 may be made by any officer or employee of such State or political subdivision or such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose.

(Added Pub. L. 99–509, title IX, § 9002(a)(1), Oct. 21, 1986, 100 Stat. 1970.)

Editorial Notes

PRIOR PROVISIONS

A prior section 3126 was renumbered section 3128 of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section, except as otherwise provided, effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of Title 42, The Public Health and Welfare, see section 9002(d) of Pub. L. 99–509, set out as an Effective Date of 1986 Amendment note under section 418 of Title 42.

§ 3127. Exemption for employers and their employees where both are members of religious faiths opposed to participation in Social Security Act programs

(a) In general

Notwithstanding any other provision of this chapter (and under regulations prescribed to carry out this section), in any case where—

(1) an employer (or, if the employer is a partnership, each partner therein) is a member of a recognized religious sect or division thereof described in section 1402(g)(1) and an adherent of established tenets or teachings of such sect or division as described in such section, and has filed and had approved under subsection (b) an application (in such form and manner, and with such official, as may be prescribed by such regulations) for an exemption from the taxes imposed by section 3111, and

(2) an employee of such employer who is also a member of such a religious sect or division and an adherent of its established tenets or teachings has filed and had approved under subsection (b) an identical application for exemption from the taxes imposed by section 3101,

such employer shall be exempt from the taxes imposed by section 3111 with respect to wages paid to each of the employees thereof who meets the requirements of paragraph (2) and each such employee shall be exempt from the taxes imposed by section 3101 with respect to such wages paid to him by such employer.

(b) Approval of application

An application for exemption filed by an employer (or a partner) under subsection (a)(1) or by an employee under subsection (a)(2) shall be approved only if—

(1) such application contains or is accompanied by the evidence described in section 1402(g)(1)(A) and a waiver described in section 1402(g)(1)(B),

(2) the Commissioner of Social Security makes the findings (with respect to such sect or division) described in section 1402(g)(1)(C), (D), and (E), and

(3) no benefit or other payment referred to in section 1402(g)(1)(B) became payable (or, but for section 203 of the Social Security Act, would have become payable) to the individual filing the application at or before the time of such filing.

(c) Effective period of exemption

An exemption granted under this section to any employer with respect to wages paid to any of the employees thereof, or granted to any such employee, shall apply with respect to wages paid by such employer during the period—

(1) commencing with the first day of the first calendar quarter, after the quarter in which such application is filed, throughout which such employer (or, if the employer is a partnership, each partner therein) or employee meets the applicable requirements specified in subsections (a) and (b), and

(2) ending with the last day of the calendar quarter preceding the first calendar quarter thereafter in which (A) such employer (or, if the employer is a partnership, any partner therein) or the employee involved does not meet the applicable requirements of subsection (a), or (B) the sect or division thereof of which such employer (or, if the employer is a partnership, any partner therein) or employee is a member is found by the Commissioner of Social Security to have ceased to meet the requirements of subsection (b)(2).

(Added Pub. L. 100–647, title VIII, § 8007(a)(1), Nov. 10, 1988, 102 Stat. 3781; amended Pub. L. 101–239, title X, § 10204(b)(1), Dec. 19, 1989, 103 Stat. 2474; Pub. L. 103–296, title I, § 108(h)(3), Aug. 15, 1994, 108 Stat. 1487; Pub. L. 115–141, div. U, title IV, § 401(b)(35), Mar. 23, 2018, 132 Stat. 1204.)

Editorial Notes

REFERENCES IN TEXT

Section 203 of the Social Security Act, referred to in subsec. (b)(3), is classified to section 403 of Title 42, The Public Health and Welfare.

PRIOR PROVISIONS

A prior section 3127 was renumbered section 3128 of this title.

AMENDMENTS

2018—Subsec. (b)(3). Pub. L. 115–141 struck out ''or 222(b)'' after ''section 203''.

1994—Subsecs. (b)(2), (c)(2). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services''.

1989—Subsec. (a). Pub. L. 101–239, §10204(b)(1)(B), substituted ''the employees thereof'' for ''his employees'' in concluding provisions.

Subsec. (a)(1). Pub. L. 101–239, §10204(b)(1)(A), inserted ''(or, if the employer is a partnership, each partner therein)'' after ''an employer''.

Subsec. (b). Pub. L. 101–239, §10204(b)(1)(C), inserted ''(or a partner)'' after ''an employer'' in introductory provisions.

Subsec. (c). Pub. L. 101–239, §10204(b)(1)(D), substituted ''the employees thereof'' for ''his employees'' in introductory provisions.

Subsec. (c)(1). Pub. L. 101–239, §10204(b)(1)(E), inserted ''(or, if the employer is a partnership, each partner therein)''.

Subsec. (c)(2). Pub. L. 101–239, §10204(b)(1)(F), substituted ''such employer (or, if the employer is a partnership, any partner therein) or the employee involved does not meet'' for ''such employer or the employee involved ceases to meet'' in cl. (A) and inserted ''(or, if the employer is a partnership, any partner therein)'' after ''such employer'' in cl. (B).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title X, §10204(b)(2), Dec. 19, 1989, 103 Stat. 2474, provided that: ''The amendments made by this subsection [amending this section] shall be effective as if they were included in the amendments made by section 8007(a)(1) of the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3781) [Pub. L. 100–647].''

EFFECTIVE DATE

Section applicable to wages paid after Dec. 31, 1988, see section 8007(d) of Pub. L. 100–647, set out as an Effective Date of 1988 Amendment note under section 1402 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 115–141 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Mar. 23, 2018, for purposes of determining liability for tax for periods ending after Mar. 23, 2018, see section 401(e) of Pub. L. 115–141, set out as a note under section 23 of this title.

§3128. Short title

This chapter may be cited as the ''Federal Insurance Contributions Act.''

(Aug. 16, 1954, ch. 736, 68A Stat. 429, §3125; renumbered §3126, Pub. L. 86–778, title I, §103(q)(1), Sept. 13, 1960, 74 Stat. 939; renumbered §3127, Pub. L. 99–509, title IX, §9002(a)(1), Oct. 21, 1986, 100 Stat. 1970; renumbered §3128, Pub. L. 100–647, title VIII, §8007(a)(1), Nov. 10, 1988, 102 Stat. 3781.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–509, except as otherwise provided, effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of Title 42, The Public Health and Welfare, see section 9002(d) of Pub. L. 99–509, set out as a note under section 418 of Title 42.

Subchapter D—Credits

Sec.
3131. Credit for paid sick leave.
3132. Payroll credit for paid family leave.
3133. Special rule related to tax on employers.
3134. Employee retention credit for employers subject to closure due to COVID–19.

Editorial Notes

AMENDMENTS

2021—Pub. L. 117–2, title IX, §9651(c), Mar. 11, 2021, 135 Stat. 182, added item 3134.

§3131. Credit for paid sick leave

(a) In general

In the case of an employer, there shall be allowed as a credit against applicable employment taxes for each calendar quarter an amount equal to 100 percent of the qualified sick leave wages paid by such employer with respect to such calendar quarter.

(b) Limitations and refundability

(1) Wages taken into account

The amount of qualified sick leave wages taken into account under subsection (a), plus any increases under subsection (e), with respect to any individual shall not exceed $200 ($511 in the case of any day any portion of which is paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act, applied with the modification described in subsection (c)(2)(A)(i)) for any day (or portion thereof) for which the individual is paid qualified sick leave wages.

(2) Overall limitation on number of days taken into account

The aggregate number of days taken into account under paragraph (1) for any calendar quarter shall not exceed the excess (if any) of—

(A) 10, over

(B) the aggregate number of days so taken into account during preceding calendar quarters in such calendar year (other than the first quarter of calendar year 2021).

(3) Credit limited to certain employment taxes

The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the applicable employment taxes for such calendar quarter on the wages paid with respect to the employment of all employees of the employer.

(4) Refundability of excess credit

(A) Credit is refundable

If the amount of the credit under subsection (a) exceeds the limitation of paragraph (3) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b).

(B) Advancing credit

In anticipation of the credit, including the refundable portion under subparagraph (A), the credit shall be advanced, according to forms and instructions provided by the Secretary, up to an amount calculated under subsection (a), subject to the limits under paragraph (1) and (2), all calculated through the end of the most recent payroll period in the quarter.

(c) Qualified sick leave wages

For purposes of this section—

(1) In general

The term ''qualified sick leave wages'' means wages paid by an employer which would be required to be paid by reason of the Emergency Paid Sick Leave Act as if such Act applied after March 31, 2021.

(2) Rules of application

For purposes of determining whether wages are qualified sick leave wages under paragraph (1)—

(A) In general

The Emergency Paid Sick Leave Act shall be applied—

(i) by inserting '', the employee is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID–19 and such employee has been exposed to COVID–19 or the employee's employer has requested such test or diagnosis, or the employee is obtaining immunization related to COVID–19 or recovering from any injury, disability, illness, or condition related to such immunization'' after ''medical diagnosis'' in section 5102(a)(3) thereof, and

(ii) by applying section 5102(b)(1) of such Act separately with respect to each calendar year after 2020 (and, in the case of calendar year 2021, without regard to the first quarter thereof).

(B) Leave must meet requirements

If an employer fails to comply with any requirement of such Act (determined without regard to section 5109 thereof) with respect to paid sick time (as defined in section 5110 of such Act), amounts paid by such employer with respect to such paid sick time shall not be taken into account as qualified sick leave wages. For purposes of the preceding sentence, an employer which takes an action described in section 5104 of such Act shall be treated as failing to meet a requirement of such Act.

(d) Allowance of credit for certain health plan expenses

(1) In general

The amount of the credit allowed under subsection (a) shall be increased by so much of the employer's qualified health plan expenses as are properly allocable to the qualified sick leave wages for which such credit is so allowed.

(2) Qualified health plan expenses

For purposes of this subsection, the term ''qualified health plan expenses'' means amounts paid or incurred by the employer to provide and maintain a group health plan (as defined in section 5000(b)(1)), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a).

(3) Allocation rules

For purposes of this section, qualified health plan expenses shall be allocated to qualified sick leave wages in such manner as the Secretary may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

(e) Allowance of credit for amounts paid under certain collectively bargained agreements

(1) In general

The amount of the credit allowed under subsection (a) shall be increased by the sum of—

(A) so much of the employer's collectively bargained defined benefit pension plan contributions as are properly allocable to the qualified sick leave wages for which such credit is so allowed, plus

(B) so much of the employer's collectively bargained apprenticeship program contributions as are properly allocable to the qualified sick leave wages for which such credit is so allowed.

(2) Collectively bargained defined benefit pension plan contributions

For purposes of this subsection—

(A) In general

The term ''collectively bargained defined benefit pension plan contributions'' means, with respect to any calendar quarter, contributions which—

(i) are paid or incurred by an employer during the calendar quarter on behalf of its employees to a defined benefit plan (as defined in section 414(j)), which meets the requirements of section 401(a),

(ii) are made based on a pension contribution rate, and

(iii) are required to be made pursuant to the terms of a collective bargaining agreement in effect with respect to such calendar quarter.

(B) Pension contribution rate

The term ''pension contribution rate'' means the contribution rate that the employer is obligated to pay on behalf of its employees under the terms of a collective bargaining agreement for benefits under a defined benefit plan under such agreement, as such rate is applied to contribution base units (as defined by section 4001(a)(11) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301(a)(11)).[1]

(C) Allocation rules

The amount of collectively bargained defined benefit pension plan contributions al-

[1] So in original. Another closing parenthesis probably should precede the period.

located to qualified sick leave wages for any calendar quarter shall be the product of—

(i) the pension contribution rate (expressed as an hourly rate), and

(ii) the number of hours for which qualified sick leave wages were provided to employees covered under the collective bargaining agreement described in subparagraph (A)(iii) during the calendar quarter.

(3) Collectively bargained apprenticeship program contributions

For purposes of this section—

(A) In general

The term ''collectively bargained apprenticeship program contributions'' means, with respect to any calendar quarter, contributions which—

(i) are paid or incurred by an employer on behalf of its employees with respect to the calendar quarter to a registered apprenticeship program,

(ii) are made based on an apprenticeship program contribution rate, and

(iii) are required to be made pursuant to the terms of a collective bargaining agreement that is in effect with respect to such calendar quarter.

(B) Registered apprenticeship program

The term ''registered apprenticeship program'' means an apprenticeship registered under the Act of August 16, 1937 (commonly known as the ''National Apprenticeship Act''; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.) that meets the standards of subpart A of part 29 and part 30 of title 29, Code of Federal Regulations.

(C) Apprenticeship program contribution rate

The term ''apprenticeship program contribution rate'' means the contribution rate that the employer is obligated to pay on behalf of its employees under the terms of a collective bargaining agreement for benefits under a registered apprenticeship program under such agreement, as such rate is applied to contribution base units (as defined by section 4001(a)(11) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301(a)(11)).[1]

(D) Allocation rules

The amount of collectively bargained apprenticeship program contributions allocated to qualified sick leave wages for any calendar quarter shall be the product of—

(i) the apprenticeship program contribution rate (expressed as an hourly rate), and

(ii) the number of hours for which qualified sick leave wages were provided to employees covered under the collective bargaining agreement described in subparagraph (A)(iii) during the calendar quarter.

(f) Definitions and special rules

(1) Applicable employment taxes

For purposes of this section, the term ''applicable employment taxes'' means the following:

(A) The taxes imposed under section 3111(b).

(B) So much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b).

(2) Wages

For purposes of this section, the term ''wages'' means wages (as defined in section 3121(a), determined without regard to paragraphs (1) through (22) of section 3121(b)) and compensation (as defined in section 3231(e), determined without regard to the sentence in paragraph (1) thereof which begins ''Such term does not include remuneration'').

(3) Denial of double benefit

For purposes of chapter 1, the gross income of the employer, for the taxable year which includes the last day of any calendar quarter with respect to which a credit is allowed under this section, shall be increased by the amount of such credit. Any wages taken into account in determining the credit allowed under this section shall not be taken into account for purposes of determining the credit allowed under sections 45A, 45P, 45S, 51, 3132, and 3134. In the case of any credit allowed under section 2301 of the CARES Act or section 41 with respect to wages taken into account under this section, the credit allowed under this section shall be reduced by the portion of the credit allowed under such section 2301 or section 41 which is attributable to such wages.

(4) Election to not take certain wages into account

This section shall not apply to so much of the qualified sick leave wages paid by an eligible employer as such employer elects (at such time and in such manner as the Secretary may prescribe) to not take into account for purposes of this section.

(5) Certain governmental employers

No credit shall be allowed under this section to the Government of the United States or to any agency or instrumentality thereof. The preceding sentence shall not apply to any organization described in section 501(c)(1) and exempt from tax under section 501(a).

(6) Extension of limitation on assessment

Notwithstanding section 6501, the limitation on the time period for the assessment of any amount attributable to a credit claimed under this section shall not expire before the date that is 5 years after the later of—

(A) the date on which the original return which includes the calendar quarter with respect to which such credit is determined is filed, or

(B) the date on which such return is treated as filed under section 6501(b)(2).

(7) Coordination with certain programs

(A) In general

This section shall not apply to so much of the qualified sick leave wages paid by an eligible employer as are taken into account as payroll costs in connection with—

(i) a covered loan under section 7(a)(37) or 7A of the Small Business Act,

(ii) a grant under section 324 of the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act, or

(iii) a restaurant revitalization grant under section 5003 of the American Rescue Plan Act of 2021.

(B) Application where PPP loans not forgiven

The Secretary shall issue guidance providing that payroll costs paid during the covered period shall not fail to be treated as qualified sick leave wages under this section by reason of subparagraph (A)(i) to the extent that—

(i) a covered loan of the taxpayer under section 7(a)(37) of the Small Business Act is not forgiven by reason of a decision under section 7(a)(37)(J) of such Act, or

(ii) a covered loan of the taxpayer under section 7A of the Small Business Act is not forgiven by reason of a decision under section 7A(g) of such Act.

Terms used in the preceding sentence which are also used in section 7A(g) or 7(a)(37)(J) of the Small Business Act shall, when applied in connection with either such section, have the same meaning as when used in such section, respectively.

(g) Regulations

The Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

(1) regulations or other guidance to prevent the avoidance of the purposes of the limitations under this section,

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section,

(3) regulations or other guidance providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit allowed under this section,

(4) regulations or other guidance for recapturing the benefit of credits determined under this section in cases where there is a subsequent adjustment to the credit determined under subsection (a),

(5) regulations or other guidance to ensure that the wages taken into account under this section conform with the paid sick time required to be provided under the Emergency Paid Sick Leave Act,

(6) regulations or other guidance to permit the advancement of the credit determined under subsection (a), and

(7) regulations or other guidance with respect to the allocation, reporting, and substantiation of collectively bargained defined benefit pension plan contributions and collectively bargained apprenticeship program contributions.

(h) Application of section

This section shall apply only to wages paid with respect to the period beginning on April 1, 2021, and ending on September 30, 2021.

(i) Treatment of deposits

The Secretary shall waive any penalty under section 6656 for any failure to make a deposit of applicable employment taxes if the Secretary determines that such failure was due to the anticipation of the credit allowed under this section.

(j) Non-discrimination requirement

No credit shall be allowed under this section to any employer for any calendar quarter if such employer, with respect to the availability of the provision of qualified sick leave wages to which this section otherwise applies for such calendar quarter, discriminates in favor of highly compensated employees (within the meaning of section 414(q)), full-time employees, or employees on the basis of employment tenure with such employer.

(Added Pub. L. 117–2, title IX, § 9641(a), Mar. 11, 2021, 135 Stat. 161.)

Editorial Notes

REFERENCES IN TEXT

The Emergency Paid Sick Leave Act and such Act, referred to in subsecs. (b)(1), (c)(1), (2), and (g)(5), is division E (§ 5101 et seq.) of Pub. L. 116–127, Mar. 18, 2020, 134 Stat. 195, which is set out as a note under section 2601 of Title 29, Labor.

The National Apprenticeship Act, referred to in subsec. (e)(3)(B), is act Aug. 16, 1937, ch. 663, 50 Stat. 664, which is classified generally to chapter 4C (§ 50 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 50 of Title 29 and Tables.

Section 2301 of the CARES Act, referred to in subsec. (f)(3), is section 2301 of title II of div. A of Pub. L. 116–136, which is set out as a note under section 3111 of this title.

Section 7 of the Small Business Act, referred to in subsec. (f)(7)(A)(i), (B), is classified to section 636 of Title 15, Commerce and Trade.

Section 7A of the Small Business Act, referred to in subsec. (f)(7)(A)(i), (B), is classified to section 636m of Title 15, Commerce and Trade.

Section 324 of the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act, referred to in subsec. (f)(7)(A)(ii), is classified to section 9009a of Title 15, Commerce and Trade.

Section 5003 of the American Rescue Plan Act of 2021, referred to in subsec. (f)(7)(A)(iii), is classified to section 9009c of Title 15, Commerce and Trade.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 117–2, title IX, § 9641(d), Mar. 11, 2021, 135 Stat. 171, provided that: ''The amendments made by this section [enacting sections 3131 to 3133 of this title and amending section 1324 of Title 31, Money and Finance] shall apply to amounts paid with respect to calendar quarters beginning after March 31, 2021.''

§ 3132. Payroll credit for paid family leave

(a) In general

In the case of an employer, there shall be allowed as a credit against applicable employment taxes for each calendar quarter an amount equal to 100 percent of the qualified family leave wages paid by such employer with respect to such calendar quarter.

(b) Limitations and refundability

(1) Wages taken into account

The amount of qualified family leave wages taken into account under subsection (a), plus any increases under subsection (e), with respect to any individual shall not exceed—

(A) for any day (or portion thereof) for which the individual is paid qualified family leave wages, $200, and

(B) in the aggregate with respect to all calendar quarters, $12,000.

(2) Credit limited to certain employment taxes

The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the applicable employment taxes for such calendar quarter (reduced by any credits allowed under section 3131) on the wages paid with respect to the employment of all employees of the employer.

(3) Refundability of excess credit

(A) Credit is refundable

If the amount of the credit under subsection (a) exceeds the limitation of paragraph (2) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b).

(B) Advancing credit

In anticipation of the credit, including the refundable portion under subparagraph (A), the credit shall be advanced, according to forms and instructions provided by the Secretary, up to an amount calculated under subsection (a), subject to the limits under paragraph (1) and (2), all calculated through the end of the most recent payroll period in the quarter.

(c) Qualified family leave wages

(1) In general

For purposes of this section, the term ''qualified family leave wages'' means wages paid by an employer which would be required to be paid by reason of the Emergency Family and Medical Leave Expansion Act (including the amendments made by such Act) as if such Act (and amendments made by such Act) applied after March 31, 2021.

(2) Rules of application

(A) In general

For purposes of determining whether wages are qualified family leave wages under paragraph (1)—

(i) section 110(a)(2)(A) of the Family and Medical Leave Act of 1993 shall be applied by inserting ''or any reason for leave described in section 5102(a) of the Families First Coronavirus Response Act, or the employee is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID–19 and such employee has been exposed to COVID–19 or the employee's employer has requested such test or diagnosis, or the employee is obtaining immunization related to COVID–19 or recovering from any injury, disability, illness, or condition related to such immunization'' after ''public health emergency'', and

(ii) section 110(b) of such Act shall be applied—

(I) without regard to paragraph (1) thereof,

(II) by striking ''after taking leave after such section for 10 days'' in paragraph (2)(A) thereof, and

(III) by substituting ''$12,000'' for ''$10,000'' in paragraph (2)(B)(ii) thereof.

(B) Leave must meet requirements

For purposes of determining whether wages would be required to be paid under paragraph (1), if an employer fails to comply with any requirement of the Family and Medical Leave Act of 1993 or the Emergency Family and Medical Leave Expansion Act (determined without regard to any time limitation under section 102(a)(1)(F) of the Family and Medical Leave Act of 1994)[1] with respect to any leave provided for a qualifying need related to a public health emergency (as defined in section 110 of such Act, applied as described in subparagraph (A)(i)), amounts paid by such employer with respect to such leave shall not be taken into account as qualified family leave wages. For purposes of the preceding sentence, an employer which takes an action described in section 105 of the Family and Medical Leave Act of 1993 shall be treated as failing to meet a requirement of such Act.

(d) Allowance of credit for certain health plan expenses

(1) In general

The amount of the credit allowed under subsection (a) shall be increased by so much of the employer's qualified health plan expenses as are properly allocable to the qualified family leave wages for which such credit is so allowed.

(2) Qualified health plan expenses

For purposes of this subsection, the term ''qualified health plan expenses'' means amounts paid or incurred by the employer to provide and maintain a group health plan (as defined in section 5000(b)(1)), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a).

(3) Allocation rules

For purposes of this section, qualified health plan expenses shall be allocated to qualified family leave wages in such manner as the Secretary may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

(e) Allowance of credit for amounts paid under certain collectively bargained agreements

(1) In general

The amount of the credit allowed under subsection (a) shall be increased by so much of the sum of—

(A) so much of the employer's collectively bargained defined benefit pension plan contributions as are properly allocable to the qualified family leave wages for which such credit is so allowed, plus

(B) so much of the employer's collectively bargained apprenticeship program contributions as are properly allocable to the quali-

[1] So in original. Probably should be ''1993)''.

fied family leave wages for which such credit is so allowed.

(2) Collectively bargained defined benefit pension plan contributions

For purposes of this subsection—

(A) In general

The term ''collectively bargained defined benefit pension plan contributions'' has the meaning given such term under section 3131(e)(2).

(B) Allocation rules

The amount of collectively bargained defined benefit pension plan contributions allocated to qualified family leave wages for any calendar quarter shall be the product of—

(i) the pension contribution rate (as defined in section 3131(e)(2)), expressed as an hourly rate, and

(ii) the number of hours for which qualified family leave wages were provided to employees covered under the collective bargaining agreement described in section 3131(e)(2)(A)(iii) during the calendar quarter.

(3) Collectively bargained apprenticeship program contributions

For purposes of this section—

(A) In general

The term ''collectively bargained apprenticeship program contributions'' has the meaning given such term under section 3131(e)(3).

(B) Allocation rules

For purposes of this section, the amount of collectively bargained apprenticeship program contributions allocated to qualified family leave wages for any calendar quarter shall be the product of—

(i) the apprenticeship contribution rate (as defined in section 3131(e)(3)), expressed as an hourly rate, and

(ii) the number of hours for which qualified family leave wages were provided to employees covered under the collective bargaining agreement described in section 3131(e)(3)(A)(iii) during the calendar quarter.

(f) Definitions and special rules

(1) Applicable employment taxes

For purposes of this section, the term ''applicable employment taxes'' means the following:

(A) The taxes imposed under section 3111(b).

(B) So much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b).

(2) Wages

For purposes of this section, the term ''wages'' means wages (as defined in section 3121(a), determined without regard to paragraphs (1) through (22) of section 3121(b)) and compensation (as defined in section 3231(e), determined without regard to the sentence in paragraph (1) thereof which begins ''Such term does not include remuneration'').

(3) Denial of double benefit

For purposes of chapter 1, the gross income of the employer, for the taxable year which includes the last day of any calendar quarter with respect to which a credit is allowed under this section, shall be increased by the amount of such credit. Any wages taken into account in determining the credit allowed under this section shall not be taken into account for purposes of determining the credit allowed under sections 45A, 45P, 45S, 51, 3131, and 3134. In the case of any credit allowed under section 2301 of the CARES Act or section 41 with respect to wages taken into account under this section, the credit allowed under this section shall be reduced by the portion of the credit allowed under such section 2301 or section 41 which is attributable to such wages.

(4) Election to not take certain wages into account

This section shall not apply to so much of the qualified family leave wages paid by an eligible employer as such employer elects (at such time and in such manner as the Secretary may prescribe) to not take into account for purposes of this section.

(5) Certain governmental employers

No credit shall be allowed under this section to the Government of the United States or to any agency or instrumentality thereof. The preceding sentence shall not apply to any organization described in section 501(c)(1) and exempt from tax under section 501(a).

(6) Extension of limitation on assessment

Notwithstanding section 6501, the limitation on the time period for the assessment of any amount attributable to a credit claimed under this section shall not expire before the date that is 5 years after the later of—

(A) the date on which the original return which includes the calendar quarter with respect to which such credit is determined is filed, or

(B) the date on which such return is treated as filed under section 6501(b)(2).

(7) Coordination with certain programs

(A) In general

This section shall not apply to so much of the qualified family leave wages paid by an eligible employer as are taken into account as payroll costs in connection with—

(i) a covered loan under section 7(a)(37) or 7A of the Small Business Act,

(ii) a grant under section 324 of the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act, or

(iii) a restaurant revitalization grant under section 5003 of the American Rescue Plan Act of 2021.

(B) Application where PPP loans not forgiven

The Secretary shall issue guidance providing that payroll costs paid during the covered period shall not fail to be treated as qualified family leave wages under this sec-

tion by reason of subparagraph (A)(i) to the extent that—

(i) a covered loan of the taxpayer under section 7(a)(37) of the Small Business Act is not forgiven by reason of a decision under section 7(a)(37)(J) of such Act, or

(ii) a covered loan of the taxpayer under section 7A of the Small Business Act is not forgiven by reason of a decision under section 7A(g) of such Act.

Terms used in the preceding sentence which are also used in section 7A(g) or 7(a)(37)(J) of the Small Business Act shall, when applied in connection with either such section, have the same meaning as when used in such section, respectively.

(g) Regulations

The Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

(1) regulations or other guidance to prevent the avoidance of the purposes of the limitations under this section,

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section,

(3) regulations or other guidance providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit allowed under this section,

(4) regulations or other guidance for recapturing the benefit of credits determined under this section in cases where there is a subsequent adjustment to the credit determined under subsection (a),

(5) regulations or other guidance to ensure that the wages taken into account under this section conform with the paid leave required to be provided under the Emergency Family and Medical Leave Expansion Act (including the amendments made by such Act),

(6) regulations or other guidance to permit the advancement of the credit determined under subsection (a), and

(7) regulations or other guidance with respect to the allocation, reporting, and substantiation of collectively bargained defined benefit pension plan contributions and collectively bargained apprenticeship program contributions.

(h) Application of section

This section shall apply only to wages paid with respect to the period beginning on April 1, 2021, and ending on September 30, 2021.

(i) Treatment of deposits

The Secretary shall waive any penalty under section 6656 for any failure to make a deposit of applicable employment taxes if the Secretary determines that such failure was due to the anticipation of the credit allowed under this section.

(j) Non-discrimination requirement

No credit shall be allowed under this section to any employer for any calendar quarter if such employer, with respect to the availability of the provision of qualified family leave wages to which this section otherwise applies for such calendar quarter, discriminates in favor of highly compensated employees (within the meaning of section 414(q)), full-time employees, or employees on the basis of employment tenure with such employer.

(Added Pub. L. 117–2, title IX, §9641(a), Mar. 11, 2021, 135 Stat. 166.)

Editorial Notes

REFERENCES IN TEXT

The Emergency Family and Medical Leave Expansion Act and such Act, referred to in subsecs. (c)(1), (2)(B) and (g)(5), is div. C of Pub. L. 116–127, Mar. 18, 2020, 134 Stat. 189. For complete classification of this Act to the Code, see Short Title of 2020 Amendment note set out under section 2601 of Title 29, Labor, and Tables.

The Family and Medical Leave Act of 1993 and such Act, referred to in subsec. (c)(2), is Pub. L. 103–3, Feb. 5, 1993, 107 Stat. 6, which enacted chapter 28 (§2601 et seq.) of Title 29, Labor, sections 60m and 60n of Title 2, The Congress, and sections 6381 to 6387 of Title 5, Government Organization and Employees, amended section 2105 of Title 5, and enacted provisions set out as notes under section 2601 of Title 29. Sections 102, 105, and 110 of the Act are classified to sections 2612, 2615, and 2620, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 29 and Tables.

Section 5102(a) of the Families First Coronavirus Response Act, referred to in subsec. (c)(2)(A)(i), is section 5102(a) of Pub. L. 116–127, which is set out in a note under section 2601 of Title 29, Labor.

Section 2301 of the CARES Act, referred to in subsec. (f)(3), is section 2301 of title II of div. A of Pub. L. 116–136, which is set out as a note under section 3111 of this title.

Section 7 of the Small Business Act, referred to in subsec. (f)(7)(A)(i), (B), is classified to section 636 of Title 15, Commerce and Trade.

Section 7A of the Small Business Act, referred to in subsec. (f)(7)(A)(i), (B), is classified to section 636m of Title 15, Commerce and Trade.

Section 324 of the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act, referred to in subsec. (f)(7)(A)(ii), is classified to section 9009a of Title 15, Commerce and Trade.

Section 5003 of the American Rescue Plan Act of 2021, referred to in subsec. (f)(7)(A)(iii), is classified to section 9009c of Title 15, Commerce and Trade.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section applicable to amounts paid with respect to calendar quarters beginning after Mar. 31, 2021, see section 9641(d) of Pub. L. 117–2, set out as a note under secton 3131 of this title.

§3133. Special rule related to tax on employers

(a) In general

The credit allowed by section 3131 and the credit allowed by section 3132 shall each be increased by the amount of the taxes imposed by subsections (a) and (b) of section 3111 and section 3221(a) on qualified sick leave wages, or qualified family leave wages, for which credit is allowed under such section 3131 or 3132 (respectively).

(b) Denial of double benefit

For denial of double benefit with respect to the credit increase under subsection (a), see sections 3131(f)(3) and 3132(f)(3).

(Added Pub. L. 117–2, title IX, §9641(a), Mar. 11, 2021, 135 Stat. 171.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section applicable to amounts paid with respect to calendar quarters beginning after Mar. 31, 2021, see section 9641(d) of Pub. L. 117–2, set out as a note under secton 3131 of this title.

§ 3134. Employee retention credit for employers subject to closure due to COVID–19

(a) In general

In the case of an eligible employer, there shall be allowed as a credit against applicable employment taxes for each calendar quarter an amount equal to 70 percent of the qualified wages with respect to each employee of such employer for such calendar quarter.

(b) Limitations and refundability

(1) In general

(A) Wages taken into account

The amount of qualified wages with respect to any employee which may be taken into account under subsection (a) by the eligible employer for any calendar quarter shall not exceed $10,000.

(B) Recovery startup businesses

In the case of an eligible employer which is a recovery startup business (as defined in subsection (c)(5)), the amount of the credit allowed under subsection (a) (after application of subparagraph (A)) for any calendar quarter shall not exceed $50,000.

(2) Credit limited to employment taxes

The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the applicable employment taxes (reduced by any credits allowed under sections 3131 and 3132) on the wages paid with respect to the employment of all the employees of the eligible employer for such calendar quarter.

(3) Refundability of excess credit

If the amount of the credit under subsection (a) exceeds the limitation of paragraph (2) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b).

(c) Definitions

For purposes of this section—

(1) Applicable employment taxes

The term ''applicable employment taxes'' means the following:

(A) The taxes imposed under section 3111(b).

(B) So much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b).

(2) Eligible employer

(A) In general

The term ''eligible employer'' means any employer—

(i) which was carrying on a trade or business during the calendar quarter for which the credit is determined under subsection (a), and

(ii) with respect to any calendar quarter, for which—

(I) the operation of the trade or business described in clause (i) is fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to the coronavirus disease 2019 (COVID–19),

(II) the gross receipts (within the meaning of section 448(c)) of such employer for such calendar quarter are less than 80 percent of the gross receipts of such employer for the same calendar quarter in calendar year 2019, or

(III) the employer is a recovery startup business (as defined in paragraph (5)).

With respect to any employer for any calendar quarter, if such employer was not in existence as of the beginning of the same calendar quarter in calendar year 2019, clause (ii)(II) shall be applied by substituting ''2020'' for ''2019''.

(B) Election to use alternative quarter

At the election of the employer—

(i) subparagraph (A)(ii)(II) shall be applied—

(I) by substituting ''for the immediately preceding calendar quarter'' for ''for such calendar quarter'', and

(II) by substituting ''the corresponding calendar quarter in calendar year 2019'' for ''the same calendar quarter in calendar year 2019'', and

(ii) the last sentence of subparagraph (A) shall be applied by substituting ''the corresponding calendar quarter in calendar year 2019'' for ''the same calendar quarter in calendar year 2019''.

An election under this subparagraph shall be made at such time and in such manner as the Secretary shall prescribe.

(C) Tax-exempt organizations

In the case of an organization which is described in section 501(c) and exempt from tax under section 501(a)—

(i) clauses (i) and (ii)(I) of subparagraph (A) shall apply to all operations of such organization, and

(ii) any reference in this section to gross receipts shall be treated as a reference to gross receipts within the meaning of section 6033.

(3) Qualified wages

(A) In general

The term ''qualified wages'' means—

(i) in the case of an eligible employer for which the average number of full-time employees (within the meaning of section 4980H) employed by such eligible employer during 2019 was greater than 500, wages paid by such eligible employer with respect to which an employee is not providing services due to circumstances described in subclause (I) or (II) of paragraph (2)(A)(ii), or

(ii) in the case of an eligible employer for which the average number of full-time

employees (within the meaning of section 4980H) employed by such eligible employer during 2019 was not greater than 500—

(I) with respect to an eligible employer described in subclause (I) of paragraph (2)(A)(ii), wages paid by such eligible employer with respect to an employee during any period described in such clause, or

(II) with respect to an eligible employer described in subclause (II) of such paragraph, wages paid by such eligible employer with respect to an employee during such quarter.

(B) Special rule for employers not in existence in 2019

In the case of any employer that was not in existence in 2019, subparagraph (A) shall be applied by substituting ''2020'' for ''2019'' each place it appears.

(C) Severely financially distressed employers

(i) In general

Notwithstanding subparagraph (A)(i), in the case of a severely financially distressed employer, the term ''qualified wages'' means wages paid by such employer with respect to an employee during any calendar quarter.

(ii) Definition

The term ''severely financially distressed employer'' means an eligible employer as defined in paragraph (2), determined by substituting ''less than 10 percent'' for ''less than 80 percent'' in subparagraph (A)(ii)(II) thereof.

(D) Exception

The term ''qualified wages'' shall not include any wages taken into account under sections 41, 45A, 45P, 45S, 51, 1396, 3131, and 3132.

(4) Wages

(A) In general

The term ''wages'' means wages (as defined in section 3121(a)) and compensation (as defined in section 3231(e)). For purposes of the preceding sentence, in the case of any organization or entity described in subsection (f)(2), wages as defined in section 3121(a) shall be determined without regard to paragraphs (5), (6), (7), (10), and (13) of section 3121(b) (except with respect to services performed in a penal institution by an inmate thereof).

(B) Allowance for certain health plan expenses

(i) In general

Such term shall include amounts paid by the eligible employer to provide and maintain a group health plan (as defined in section 5000(b)(1)), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a).

(ii) Allocation rules

For purposes of this section, amounts treated as wages under clause (i) shall be treated as paid with respect to any employee (and with respect to any period) to the extent that such amounts are properly allocable to such employee (and to such period) in such manner as the Secretary may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among periods of coverage.

(5) Recovery startup business

The term ''recovery startup business'' means any employer—

(A) which began carrying on any trade or business after February 15, 2020, and

(B) for which the average annual gross receipts of such employer (as determined under rules similar to the rules under section 448(c)(3)) for the 3-taxable-year period ending with the taxable year which precedes the calendar quarter for which the credit is determined under subsection (a) does not exceed $1,000,000.

(6) Other terms

Any term used in this section which is also used in this chapter or chapter 22 shall have the same meaning as when used in such chapter.

(d) Aggregation rule

All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (m) or (*o*) of section 414, shall be treated as one employer for purposes of this section.

(e) Certain rules to apply

For purposes of this section, rules similar to the rules of sections 51(i)(1) and 280C(a) shall apply.

(f) Certain governmental employers

(1) In general

This credit shall not apply to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing.

(2) Exception

Paragraph (1) shall not apply to—

(A) any organization described in section 501(c)(1) and exempt from tax under section 501(a), or

(B) any entity described in paragraph (1) if—

(i) such entity is a college or university, or

(ii) the principal purpose or function of such entity is providing medical or hospital care.

In the case of any entity described in subparagraph (B), such entity shall be treated as satisfying the requirements of subsection (c)(2)(A)(i).

(g) Election to not take certain wages into account

This section shall not apply to so much of the qualified wages paid by an eligible employer as such employer elects (at such time and in such manner as the Secretary may prescribe) to not take into account for purposes of this section.

(h) Coordination with certain programs

(1) In general

This section shall not apply to so much of the qualified wages paid by an eligible employer as are taken into account as payroll costs in connection with—

(A) a covered loan under section 7(a)(37) or 7A of the Small Business Act,

(B) a grant under section 324 of the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act, or

(C) a restaurant revitalization grant under section 5003 of the American Rescue Plan Act of 2021.

(2) Application where PPP loans not forgiven

The Secretary shall issue guidance providing that payroll costs paid during the covered period shall not fail to be treated as qualified wages under this section by reason of paragraph (1) to the extent that—

(A) a covered loan of the taxpayer under section 7(a)(37) of the Small Business Act is not forgiven by reason of a decision under section 7(a)(37)(J) of such Act, or

(B) a covered loan of the taxpayer under section 7A of the Small Business Act is not forgiven by reason of a decision under section 7A(g) of such Act.

Terms used in the preceding sentence which are also used in section 7A(g) or 7(a)(37)(J) of the Small Business Act shall, when applied in connection with either such section, have the same meaning as when used in such section, respectively.

(i) Third party payors

Any credit allowed under this section shall be treated as a credit described in section 3511(d)(2).

(j) Advance payments

(1) In general

Except as provided in paragraph (2), no advance payment of the credit under subsection (a) shall be allowed.

(2) Advance payments to small employers

(A) In general

Under rules provided by the Secretary, an eligible employer for which the average number of full-time employees (within the meaning of section 4980H) employed by such eligible employer during 2019 was not greater than 500 may elect for any calendar quarter to receive an advance payment of the credit under subsection (a) for such quarter in an amount not to exceed 70 percent of the average quarterly wages paid by the employer in calendar year 2019.

(B) Special rule for seasonal employers

In the case of any employer who employs seasonal workers (as defined in section 45R(d)(5)(B)), the employer may elect to apply subparagraph (A) by substituting ''the wages for the calendar quarter in 2019 which corresponds to the calendar quarter to which the election relates'' for ''the average quarterly wages paid by the employer in calendar year 2019''.

(C) Special rule for employers not in existence in 2019

In the case of any employer that was not in existence in 2019, subparagraphs (A) and (B) shall each be applied by substituting ''2020'' for ''2019'' each place it appears.

(3) Reconciliation of credit with advance payments

(A) In general

The amount of credit which would (but for this subsection) be allowed under this section shall be reduced (but not below zero) by the aggregate payment allowed to the taxpayer under paragraph (2). Any failure to so reduce the credit shall be treated as arising out of a mathematical or clerical error and assessed according to section 6213(b)(1).

(B) Excess advance payments

If the advance payments to a taxpayer under paragraph (2) for a calendar quarter exceed the credit allowed by this section (determined without regard to subparagraph (A)), the tax imposed under section 3111(b) or so much of the tax imposed under section 3221(a) as is attributable to the rate in effect under section 3111(b) (whichever is applicable) for the calendar quarter shall be increased by the amount of such excess.

(k) Treatment of deposits

The Secretary shall waive any penalty under section 6656 for any failure to make a deposit of any applicable employment taxes if the Secretary determines that such failure was due to the reasonable anticipation of the credit allowed under this section.

***(l)* Extension of limitation on assessment**

Notwithstanding section 6501, the limitation on the time period for the assessment of any amount attributable to a credit claimed under this section shall not expire before the date that is 5 years after the later of—

(1) the date on which the original return which includes the calendar quarter with respect to which such credit is determined is filed, or

(2) the date on which such return is treated as filed under section 6501(b)(2).

(m) Regulations and guidance

The Secretary shall issue such forms, instructions, regulations, and other guidance as are necessary—

(1) to allow the advance payment of the credit under subsection (a) as provided in subsection (j)(2), subject to the limitations provided in this section, based on such information as the Secretary shall require,

(2) with respect to the application of the credit under subsection (a) to third party payors (including professional employer organizations, certified professional employer organizations, or agents under section 3504), including regulations or guidance allowing such payors to submit documentation necessary to substantiate the eligible employer status of employers that use such payors, and

(3) to prevent the avoidance of the purposes of the limitations under this section, including through the leaseback of employees.

Any forms, instructions, regulations, or other guidance described in paragraph (2) shall require the customer to be responsible for the accounting of the credit and for any liability for improperly claimed credits and shall require the certified professional employer organization or other third party payor to accurately report such tax credits based on the information provided by the customer.

(n) Application

This section shall only apply to wages paid after June 30, 2021, and before October 1, 2021 (or, in the case of wages paid by an eligible employer which is a recovery startup business, January 1, 2022).

(Added Pub. L. 117–2, title IX, §9651(a), Mar. 11, 2021, 135 Stat. 177; amended Pub. L. 117–58, div. H, title VI, §80604(a), Nov. 15, 2021, 135 Stat. 1341.)

Editorial Notes

REFERENCES IN TEXT

Section 7 of the Small Business Act, referred to in subsec. (h)(1)(A), (2), is classified to section 636 of Title 15, Commerce and Trade.

Section 7A of the Small Business Act, referred to in subsec. (h)(1)(A), (2), is classified to section 636m of Title 15, Commerce and Trade.

Section 324 of the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act, referred to in subsec. (h)(1)(B), is classified to section 9009a of Title 15, Commerce and Trade.

Section 5003 of the American Rescue Plan Act of 2021, referred to in subsec. (h)(1)(C), is classified to section 9009c of Title 15, Commerce and Trade.

AMENDMENTS

2021—Subsec. (c)(5)(C). Pub. L. 117–58, §80604(a)(1), struck out subpar. (C) which read as follows: ''which, with respect to such calendar quarter, is not described in subclause (I) or (II) of paragraph (2)(A)(ii).''.

Subsec. (n). Pub. L. 117–58, §80604(a)(2), substituted ''October 1, 2021 (or, in the case of wages paid by an eligible employer which is a recovery startup business, January 1, 2022)'' for ''January 1, 2022''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 117–58, div. H, title VI, §80604(b), Nov. 15, 2021, 135 Stat. 1341, provided that: ''The amendments made by this section [amending this section] shall apply to calendar quarters beginning after September 30, 2021.''

EFFECTIVE DATE

Pub. L. 117–2, title IX, §9651(d), Mar. 11, 2021, 135 Stat. 182, provided that: ''The amendments made by this section [enacting this section and amending section 1324 of Title 31, Money and Finance] shall apply to calendar quarters beginning after June 30, 2021.''

CHAPTER 22—RAILROAD RETIREMENT TAX ACT

Subchapter		Sec.[1]
A.	Tax on employees	3201
B.	Tax on employee representatives	3211
C.	Tax on employers	3221
D.	General provisions	3231
E.	Tier 2 tax rate determination.	3241

[1] Section numbers editorially supplied.

Editorial Notes

AMENDMENTS

2001—Pub. L. 107–90, title II, §204(e)(5), Dec. 21, 2001, 115 Stat. 893, added item for subchapter E.

Subchapter A—Tax on Employees

Sec.
3201. Rate of tax.
3202. Deduction of tax from compensation.

§ 3201. Rate of tax

(a) Tier 1 tax

In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the applicable percentage of the compensation received during any calendar year by such employee for services rendered by such employee. For purposes of the preceding sentence, the term ''applicable percentage'' means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3101 for the calendar year.

(b) Tier 2 tax

In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the percentage determined under section 3241 for any calendar year of the compensation received during such calendar year by such employee for services rendered by such employee.

(c) Cross reference

For application of different contribution bases with respect to the taxes imposed by subsections (a) and (b), see section 3231(e)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 431; Aug. 31, 1954, ch. 1164, pt. II, §206(a), 68 Stat. 1040; Pub. L. 86–28, pt. II, §201(a), May 19, 1959, 73 Stat. 28; Pub. L. 88–133, title II, §201, Oct. 5, 1963, 77 Stat. 221; Pub. L. 89–97, title I, §§105(b)(1), 111(c)(1), July 30, 1965, 79 Stat. 335, 342; Pub. L. 89–212, §§4, 5(a), Sept. 29, 1965, 79 Stat. 861; Pub. L. 89–699, title III, §301(a), Oct. 30, 1966, 80 Stat. 1078; Pub. L. 89–700, title III, §301(v), (vi), Oct. 30, 1966, 80 Stat. 1088, 1089; Pub. L. 93–69, title I, §102(a), July 10, 1973, 87 Stat. 162; Pub. L. 94–93, title II, §201, Aug. 9, 1975, 89 Stat. 466; Pub. L. 94–455, title XIX, §1903(a)(6), Oct. 4, 1976, 90 Stat. 1807; Pub. L. 97–34, title VII, §741(a), Aug. 13, 1981, 95 Stat. 347; Pub. L. 98–76, title II, §§211(a), 221, Aug. 12, 1983, 97 Stat. 419, 420; Pub. L. 100–203, title IX, §9031(a), Dec. 22, 1987, 101 Stat. 1330–296; Pub. L. 101–508, title V, §5125(a), Nov. 5, 1990, 104 Stat. 1388–285; Pub. L. 107–90, title II, §204(c), Dec. 21, 2001, 115 Stat. 892; Pub. L. 113–295, div. A, title II, §221(a)(100)(A), Dec. 19, 2014, 128 Stat. 4052.)

Editorial Notes

AMENDMENTS

2014—Subsec. (b). Pub. L. 113–295 amended subsec. (b) generally. Prior to amendment, subsec. (b) consisted of pars. (1) and (2) establishing the tier 2 tax and its applicable percentage.

2001—Subsec. (b). Pub. L. 107–90 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to 4.90 percent of the compensation received dur-