

Public Law 87-321

AN ACT

September 26, 1961
[H. R. 2585]

Relating to the credits against the employment tax in the case of certain successor employers and to provide an election for past taxable years with respect to the determination of gross income from mining in the case of quartzite and clay used in the production of refractory products.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 3302 of the Internal Revenue Code of 1954 (relating to credits against tax imposed by Federal Unemployment Tax Act) is amended by adding at the end thereof the following new subsection:

Federal Unemployment Tax Act, amendment.
74 Stat. 980.
26 USC 3302.

"(e) **SUCCESSOR EMPLOYER.**—Subject to the limits provided by subsection (c), if—

"(1) an employer acquires during any calendar year substantially all the property used in the trade or business of another person, or used in a separate unit of a trade or business of such other person, and immediately after the acquisition employs in his trade or business one or more individuals who immediately prior to the acquisition were employed in the trade or business of such other person, and

"(2) such other person is not an employer for the calendar year in which the acquisition takes place,

then, for the calendar year in which the acquisition takes place, in addition to the credits allowed under subsections (a) and (b), such employer may credit against the tax imposed by section 3301 for such year an amount equal to the credits which (without regard to subsection (c)) would have been allowable to such other person under subsections (a) and (b) and this subsection for such year, if such other person had been an employer, with respect to remuneration subject to contributions under the unemployment compensation law of a State paid by such other person to the individual or individuals described in paragraph (1)."

(b) The amendment made by subsection (a) shall apply with respect to the calendar year 1961 and each calendar year thereafter.

SEC. 2. ELECTION FOR QUARTZITE AND CLAY USED IN THE PRODUCTION OF REFRACTORY PRODUCTS.

(a) **ELECTION FOR PAST YEARS.**—If an election is made under subsection (c), in the case of quartzite and clay used by the mine owner or operator in the production of refractory products, for the purpose of applying section 613 (c) of the Internal Revenue Code of 1954 (and corresponding provisions of the Internal Revenue Code of 1939) for each of the taxable years with respect to which the election is effective—

26 USC 613.

(1) the term "ordinary treatment processes" shall include crushing, grinding, and separating the mineral from waste, but shall not include any subsequent process; and

"Ordinary treatment processes".

(2) the gross income from mining for each short ton of such quartzite or clay used in the production of all refractory products sold during the taxable year shall be equal to 87½ percent of the lesser of—

(A) the average lowest published or advertised price, or

(B) the average lowest actual selling price,

at which, during the taxable year, the mine owner or operator offered to sell, or sold, such quartzite or clay (in the form and condition of such products after the application of only the

processes described in paragraph (1) and before transportation from the plant in which such processes were applied). For purposes of this paragraph, exceptional, unusual, or nominal sales or selling prices shall be disregarded. If the mine owner or operator makes no sales of, or makes only exceptional, unusual, or nominal sales of, such quartzite or clay after application of only the processes described in paragraph (1), then in lieu of the price provided for in subparagraph (A) or (B) there shall be used the average lowest recognized selling price for the taxable year for such quartzite or clay in the marketing area of the mine owner or operator published in a trade journal or other industry publication.

(b) **YEARS TO WHICH APPLICABLE.**—An election made under subsection (c) to have the provisions of this section apply shall be effective on and after January 1, 1951, for all taxable years beginning before January 1, 1961, in respect of which—

- (1) the assessment of a deficiency,
- (2) the refund or credit of an overpayment, or
- (3) the commencement of a suit for recovery of a refund under

26 USC 7405.

section 7405 of the Internal Revenue Code of 1954,

is not prevented on the date of the enactment of this Act by the operation of any law or rule of law. Such election shall also be effective on and after January 1, 1951, for any taxable year beginning before January 1, 1961, in respect of which an assessment of a deficiency has been made but not collected on or before the date of the enactment of this Act.

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(c) **TIME AND MANNER OF ELECTION.**—An election to have the provisions of this section apply shall be made by the taxpayer on or before the 60th day after the date of publication in the Federal Register of final regulations issued under authority of subsection (f), and shall be made in such form and manner as the Secretary of the Treasury or his delegate shall prescribe by regulations. Such election, if made, may not be revoked.

(d) **STATUTES OF LIMITATIONS.**—Notwithstanding any other law, the period within which an assessment of a deficiency attributable to the election under subsection (c) may be made with respect to any taxable year for which such election is effective, and the period within which a claim for refund or credit of an overpayment attributable to the election under such subsection may be made with respect to any such taxable year, shall not expire prior to one year after the last day for making an election under subsection (c). An election by a taxpayer under subsection (c) shall be considered as a consent to the application of the provisions of this subsection.

68A Stat. 3.
53 Stat. 1.

(e) **TERMS; APPLICABILITY OF OTHER LAWS.**—Except where otherwise distinctly expressed or manifestly intended, terms used in this section shall have the same meaning as when used in the Internal Revenue Code of 1954 (or corresponding provisions of the Internal Revenue Code of 1939) and all provisions of law shall apply with respect to this section as if this section were a part of such Code (or corresponding provisions of the Internal Revenue Code of 1939).

(f) **REGULATIONS.**—The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this section.

Approved September 26, 1961.