

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).