

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 subsec. (b) of 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.

**PAYROLL CREDITS FOR EMERGENCY SICK OR FAMILY LEAVE AND SPECIAL RULE FOR 2020**

For allowance of credit against tax imposed by subsec. (a) of this section for certain sick leave wages paid by an employer applicable during part of 2020, see section 7001 of Pub. L. 116-127, set out as a note under section 3111 of this title.

For allowance of credit against tax imposed by subsec. (a) of this section for certain family leave wages paid by an employer applicable during part of 2020, see section 7003 of Pub. L. 116-127, set out as a note under section 3111 of this title.

For provision that sick leave and family leave wages paid out by reason of certain provisions of Pub. L. 116-127 not to be considered compensation for purposes of subsec. (a) of this section, see section 7005 of Pub. L. 116-127, set out as a note under section 3111 of this title.

**EXCISE TAXES ON EMPLOYERS; EMPLOYEES COVERED BY CERTAIN SUPPLEMENTAL PENSION PLANS**

Pub. L. 91-215, §5(b)(2), Mar. 17, 1970, 84 Stat. 71, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to (A) supplemental annuities paid on or after April 1, 1970, and (B) man-hours with respect to which compensation is paid for services rendered to such employer on or after such day."

**Subchapter D—General Provisions**

Sec.	
3231.	Definitions.
3232.	Court jurisdiction.
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**§ 3231. Definitions**

**(a) Employer**

For purposes of this chapter, the term "employer" means any carrier (as defined in subsection (g)), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer; except that the term "employer" shall not in-

clude any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Surface Transportation Board is hereby authorized and directed upon request of the Secretary, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this exception. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended (45 U.S.C., chapter 8), and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitutions and bylaws of such organizations. The term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

**(b) Employee**

For purposes of this chapter, the term "employee" means any individual in the service of one or more employers for compensation. The term "employee" includes an officer of an employer. The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

**(c) Employee representative**

For purposes of this chapter, the term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in subsection (a), who before or after June 29, 1937, was in the service of an employer as defined in subsection (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act (45 U.S.C., chapter 8), as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

**(d) Service**

For purposes of this chapter, an individual is in the service of an employer whether his service is rendered within or without the United States, if—

- (1) he is subject to the continuing authority of the employer to supervise and direct the

manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and

(2) he renders such service for compensation;

except that an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States, only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if—

(3) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or

(4) the headquarters of such local lodge or division is located in the United States;

and an individual shall be deemed to be in the service of such a general committee only if—

(5) he is representing a local lodge or division described in paragraph (3) or (4) immediately above; or

(6) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or

(7) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to section 1(c) of the Railroad Retirement Act of 1937 (45 U.S.C. 228a) shall be applicable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 percent of his remuneration for such service, no part of such remuneration shall be regarded as compensation;

*Provided however,* That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof; and the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

### (e) Compensation

For purposes of this chapter—

(1) The term "compensation" means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers. Such term does not include (i) 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 sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability or death, except that this clause 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, (ii) tips (except as is provided under paragraph (3)), (iii) an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred or reasonably expected to be incurred in the business of the employer provided any such payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment, or (iv) any remuneration which would not (if chapter 21 applied to such remuneration) be treated as wages (as defined in section 3121(a)) by reason of section 3121(a)(5). Such term does not include remuneration for service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a non-immigrant 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. For the purpose of determining the amount of taxes under sections 3201 and 3221, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than \$25. Compensation for service as a delegate to a national or international convention of a railway labor organization defined as an "employer" in subsection (a) of this section shall be disregarded for purposes of determining the amount of taxes due pursuant to this chapter if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service" for purposes of the Railroad Retirement Act. Nothing in the regulations prescribed for purposes of chapter 24 (relating to wage withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "compensa-

tion” in regulations prescribed for purposes of this chapter.

**(2) Application of contribution bases**

**(A) Compensation in excess of applicable base excluded**

**(i) In general**

The term “compensation” does not include that part of remuneration paid during any calendar year to an individual by an employer after remuneration equal to the applicable base has been paid during such calendar year to such individual by such employer for services rendered as an employee to such employer.

**(ii) Remuneration not treated as compensation excluded**

There shall not be taken into account under clause (i) remuneration which (without regard to clause (i)) is not treated as compensation under this subsection.

**(iii) Hospital insurance taxes**

Clause (i) shall not apply to—

(I) so much of the rate applicable under section 3201(a) or 3221(a) as does not exceed the rate of tax in effect under section 3101(b), and

(II) so much of the rate applicable under section 3211(a) as does not exceed the rate of tax in effect under section 1401(b).

**(B) Applicable base**

**(i) Tier 1 taxes**

Except as provided in clause (ii), the term “applicable base” means for any calendar year the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.

**(ii) Tier 2 taxes, etc.**

For purposes of—

(I) the taxes imposed by sections 3201(b), 3211(b), and 3221(b), and

(II) computing average monthly compensation under section 3(j) of the Railroad Retirement Act of 1974 (except with respect to annuity amounts determined under subsection (a) or (f)(3) of section 3 of such Act),

clause (2) of the first sentence, and the second sentence, of subsection (c) of section 230 of the Social Security Act shall be disregarded.

**(C) Successor employers**

For purposes of this paragraph, the second sentence of section 3121(a)(1) (relating to successor employers) shall apply, except that—

(i) the term “services” shall be substituted for “employment” each place it appears,

(ii) the term “compensation” shall be substituted for “remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection)” each place it appears, and

(iii) the terms “employer”, “services”, and “compensation” shall have the meanings given such terms by this section.

(3) Solely for purposes of the taxes imposed by section 3201 and other provisions of this chapter insofar as they relate to such taxes, the term “compensation” also includes 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 less than \$20.

(4)(A) For purposes of applying sections 3201(a), 3211(a), and 3221(a), in the case of payments made to an employee or any of his dependents on account of sickness or accident disability, clause (i) of the second sentence of paragraph (1) shall exclude from the term “compensation” only—

(i) payments which are received under a workmen’s compensation law, and

(ii) benefits received under the Railroad Retirement Act of 1974.

(B) Notwithstanding any other provision of law, for purposes of the sections specified in subparagraph (A), the term “compensation” shall include benefits paid under section 2(a) of the Railroad Unemployment Insurance Act for days of sickness, except to the extent that such sickness (as determined in accordance with standards prescribed by the Railroad Retirement Board) is the result of on-the-job injury.

(C) Under regulations prescribed by the Secretary, subparagraphs (A) and (B) shall not apply to payments made after the expiration of a 6-month period comparable to the 6-month period described in section 3121(a)(4).

(D) Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in compensation solely by reason of subparagraph (A) or (B) shall be treated for purposes of this chapter as the employer with respect to such compensation.

(5) The term “compensation” shall not include 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.

(6) The term “compensation” shall not include 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.

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

**(8) Treatment of certain deferred compensation and salary reduction arrangements**

**(A) Certain employer contributions treated as compensation**

Nothing in any paragraph of this subsection (other than paragraph (2)) shall exclude from the term “compensation” any amount described in subparagraph (A) or (B) of section 3121(v)(1).

**(B) Treatment of certain nonqualified deferred compensation**

The rules of section 3121(v)(2) which apply for purposes of chapter 21 shall also apply for purposes of this chapter.

**(9) Meals and lodging**

The term “compensation” shall not include the value of 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.

**(10) Archer MSA contributions**

The term “compensation” shall not include any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b).

**(11) Health savings account contributions**

The term “compensation” shall not include any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d).

**(12) Qualified stock options**

The term “compensation” shall not include any 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.

**(f) Company**

For purposes of this chapter, the term “company” includes corporations, associations, and joint-stock companies.

**(g) Carrier**

For purposes of this chapter, the term “carrier” means a rail carrier subject to part A of subtitle IV of title 49.

**(h) Tips constituting compensation, time deemed paid**

For purposes of this chapter, tips which constitute compensation for purposes of the taxes imposed by section 3201 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.

**(i) Concurrent employment by 2 or more employers**

For purposes of this chapter, if 2 or more related corporations which are employers concurrently employ the same individual and compensate such individual through a common paymaster which is 1 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.

(Aug. 16, 1954, ch. 736, 68A Stat. 434; Aug. 31, 1954, ch. 1164, pt. II, §206(b), 68 Stat. 1040; Pub. L. 89-212, §2(b), Sept. 29, 1965, 79 Stat. 859; Pub. L. 90-624, §1, Oct. 22, 1968, 82 Stat. 1316; Pub. L.

94-92, title II, §203(b), Aug. 9, 1975, 89 Stat. 465; Pub. L. 94-93, title II, §§204-206, Aug. 9, 1975, 89 Stat. 466; Pub. L. 94-455, title XIX, §§1903(a)(10), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1808, 1834; Pub. L. 94-547, §4(b), Oct. 18, 1976, 90 Stat. 2526; Pub. L. 95-473, §2(a)(2)(G), Oct. 17, 1978, 92 Stat. 1465; Pub. L. 97-34, title VII, §§741(d)(2), 743(a)-(c), Aug. 13, 1981, 95 Stat. 347, 348; Pub. L. 97-123, §3(c), Dec. 29, 1981, 95 Stat. 1662; Pub. L. 98-76, title II, §225(a)(1), (3), (b), (c)(1)(C), (6)-(8), Aug. 12, 1983, 97 Stat. 424, 425; Pub. L. 98-369, div. A, title V, §531(d)(2), July 18, 1984, 98 Stat. 884; Pub. L. 98-611, §1(f), Oct. 31, 1984, 98 Stat. 3178; Pub. L. 98-612, §1(c), Oct. 31, 1984, 98 Stat. 3181; Pub. L. 99-514, title I, §122(e)(2), title XVIII, §1899A(41), Oct. 22, 1986, 100 Stat. 2112, 2960; Pub. L. 100-647, title I, §§1001(d)(2)(C)(ii), 1011B(a)(22)(B), Nov. 10, 1988, 102 Stat. 3351, 3486; Pub. L. 101-140, title II, §203(a)(2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101-239, title X, §§10205(a), 10206(a), (b), 10207(a), (b), Dec. 19, 1989, 103 Stat. 2474-2476; Pub. L. 101-508, title XI, §§11331(c), 11704(a)(19), Nov. 5, 1990, 104 Stat. 1388-468, 1388-519; Pub. L. 103-66, title XIII, §13207(c), Aug. 10, 1993, 107 Stat. 468; Pub. L. 103-296, title III, §320(a)(1)(D), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 104-88, title III, §304(d), Dec. 29, 1995, 109 Stat. 944; Pub. L. 104-191, title III, §301(c)(2)(A), Aug. 21, 1996, 110 Stat. 2049; Pub. L. 106-554, §1(a)(7) [title II, §202(b)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A-629; Pub. L. 107-90, title II, §204(e)(3), (4), Dec. 21, 2001, 115 Stat. 893; Pub. L. 108-173, title XII, §1201(d)(2)(A), Dec. 8, 2003, 117 Stat. 2477; Pub. L. 108-357, title II, §251(a)(2), title III, §320(b)(2), Oct. 22, 2004, 118 Stat. 1458, 1473; Pub. L. 113-295, div. A, title II, §221(a)(19)(B)(v), (100)(D), Dec. 19, 2014, 128 Stat. 4040, 4052.)

**Editorial Notes****REFERENCES IN TEXT**

The Railway Labor Act, referred to in subsecs. (a) and (c), is act May 20, 1926, ch. 347, 44 Stat. 577, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

Section 1 of the Railroad Retirement Act of 1937, referred to in subsec. (d)(7), was classified to section 228a of Title 45, Railroads, prior to being omitted from the Code. The subject matter of section 228a is covered by section 231 of Title 45.

Section 230 of the Social Security Act, referred to in subsec. (e)(2)(B), is classified to section 430 of Title 42, The Public Health and Welfare.

Section 3(a), (f)(3), (j) of the Railroad Retirement Act of 1974, referred to in subsec. (e)(2)(B)(ii)(II), is classified to section 231b(a), (f)(3), (j) of Title 45, Railroads.

The Railroad Retirement Act of 1974, referred to in subsec. (e)(4)(A)(ii), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93-445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

Section 101(a)(15) of the Immigration and Nationality Act, referred to in subsec. (e)(1), is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

Section 2(a) of the Railroad Unemployment Insurance Act, referred to in subsec. (e)(4)(B), is classified to section 352(a) of Title 45, Railroads.

**AMENDMENTS**

2014—Subsec. (b). Pub. L. 113-295, §221(a)(100)(D), in first sentence substituted “compensation.” for “com-

compensation; except that the term 'employee' shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935." and struck out second sentence, which included pars. (1) to (4) and concluding provisions relating to an individual deemed to have been in the employment relation to a carrier on Aug. 29, 1935.

Subsec. (e)(7). Pub. L. 113-295, § 221(a)(19)(B)(v), struck out par. (7) which read as follows: "The term 'compensation' shall not include 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)."

2004—Subsec. (e)(5). Pub. L. 108-357, § 320(b)(2), inserted "108(f)(4)," after "74(c)."

Subsec. (e)(12). Pub. L. 108-357, § 251(a)(2), added par. (12).

2003—Subsec. (e)(11). Pub. L. 108-173 added par. (11).

2001—Subsec. (e)(2)(A)(iii)(II). Pub. L. 107-90, § 204(e)(3), substituted "3211(a)" for "3211(a)(1)".

Subsec. (e)(2)(B)(ii)(I). Pub. L. 107-90, § 204(e)(4), substituted "3211(b)" for "3211(a)(2)".

Subsec. (e)(4)(A). Pub. L. 107-90, § 204(e)(3), substituted "3211(a)" for "3211(a)(1)".

2000—Subsec. (e)(10). Pub. L. 106-554 substituted "Archer MSA" for "Medical savings account" in heading.

1996—Subsec. (e)(10). Pub. L. 104-191 added par. (10).

1995—Subsec. (a). Pub. L. 104-88, § 304(d)(1), substituted "Surface Transportation Board" for "Interstate Commerce Commission".

Subsec. (g). Pub. L. 104-88, § 304(d)(2), substituted "a rail carrier subject to part A of subtitle IV" for "an express carrier, sleeping car carrier, or rail carrier providing transportation subject to subchapter I of chapter 105".

1994—Subsec. (e)(1). Pub. L. 103-296 substituted "(J), (M), or (Q)" for "(J), or (M)" in two places.

1993—Subsec. (e)(2)(A)(iii). Pub. L. 103-66, § 13207(c)(1), added cl. (iii).

Subsec. (e)(2)(B)(i). Pub. L. 103-66, § 13207(c)(2), amended heading and text of cl. (i) generally. Prior to amendment, text read as follows:

"(I) IN GENERAL.—Except as provided in subclause (II) of this clause and in clause (ii), the term 'applicable base' means for any calendar year the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.

"(II) HOSPITAL INSURANCE TAXES.—For purposes of applying so much of the rate applicable under section 3201(a) or 3221(a) (as the case may be) as does not exceed the rate of tax in effect under section 3101(b), and for purposes of applying so much of the rate of tax applicable under section 3211(a)(1) as does not exceed the rate of tax in effect under section 1401(b), the term 'applicable base' means for any calendar year the applicable contribution base determined under section 3121(x)(2) for such calendar year."

1990—Subsec. (e)(2)(B)(i). Pub. L. 101-508, § 11331(c), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "Except as provided in clause (ii), the term 'applicable base' means for any calendar year the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year."

Subsec. (e)(8) to (10). Pub. L. 101-508, § 11704(a)(19), redesignated pars. (9) and (10) as (8) and (9), respectively.

1989—Subsec. (e)(1). Pub. L. 101-239, § 10207(b), inserted at end "Nothing in the regulations prescribed for purposes of chapter 24 (relating to wage withholding) which provides an exclusion from 'wages' as used in such chapter shall be construed to require a similar exclusion from 'compensation' in regulations prescribed for purposes of this chapter."

Pub. L. 101-239, § 10206(a), substituted "(iii)" for "or (iii)" and inserted ", or (iv) any remuneration which would not (if chapter 21 applied to such remuneration) be treated as wages (as defined in section 3121(a)) by reason of section 3121(a)(5)".

Pub. L. 101-239, § 10205(a), inserted "or death, except that this clause 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" before "(i) tips".

Subsec. (e)(8). Pub. L. 101-140 amended subsec. (e) to read as if amendments by Pub. L. 100-647, § 1011B(a)(22)(B), had not been enacted, see 1988 Amendment note below.

Subsec. (e)(9). Pub. L. 101-239, § 10206(b), added par. (9).

Subsec. (e)(10). Pub. L. 101-239, § 10207(a), added par. (10).

1988—Subsec. (e)(1). Pub. L. 100-647, § 1001(d)(2)(C)(ii), substituted "(F), (J), or (M)" for "(F) or (J)" in two places.

Subsec. (e)(8). Pub. L. 100-647, § 1011B(a)(22)(B), added par. (8).

1986—Subsec. (e)(5). Pub. L. 99-514, § 122(e)(2), inserted reference to section 74(c).

Subsec. (e)(6), (7). Pub. L. 99-514, § 1899A(41), redesignated par. (6), relating to amounts excludable under section 120, as (7).

1984—Subsec. (e)(5). Pub. L. 98-369, § 531(d)(2), added par. (5).

Subsec. (e)(6). Pub. L. 98-611 added par. (6) relating to amounts excludable under section 127.

Pub. L. 98-612 added par. (6) relating to amounts excludable under section 120.

1983—Subsec. (e)(1). Pub. L. 98-76, § 225(a)(3), struck out provisions that compensation which was paid in one calendar month but which would be payable in a prior or subsequent taxable month but for the fact prescribed date of payment would fall on a Saturday, Sunday or legal holiday would be deemed to have been paid in such prior or subsequent taxable month and that compensation which was earned during the period for which the Secretary would require a return of taxes under this chapter to be made and which was payable during the calendar month following such period would be deemed to have been paid during such period only.

Subsec. (e)(2). Pub. L. 98-76, § 225(a)(1), amended par. (2) generally, substituting provisions which exclude compensation in excess of applicable base, which define "applicable base", and which provide for the applicability of successor employer provisions to this paragraph, for provisions that a payment made by an employer to an individual through the employer's payroll would be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment was made, that an employee receiving retroactive wage payments would be deemed to be paid compensation in the period during which such compensation was earned only upon a written request by such employee, made within six months following the payment, and a showing that such compensation was earned during a period other than the period in which it was paid, that an employee would be deemed to be paid "for time lost" the amount he was paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he was paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation, and that if a payment was made by an employer with respect to a personal injury and included pay for time lost, the total payment would be deemed to be paid for time lost unless, at the time of payment, a part of such payment was specifically apportioned to factors other than time lost, in which event only such part of the payment as was not so apportioned would be deemed to be paid for time lost.

Subsec. (e)(3). Pub. L. 98-76, § 225(c)(1)(C), (6), substituted "taxes imposed by section 3201" for "tax imposed by section 3201", and "such taxes" for "such tax".

Subsec. (e)(4)(A). Pub. L. 98-76, § 225(c)(7), substituted "3201(a), 3211(a)(1), and 3221(a)" for "3201(b) and 3221(b) (and so much of section 3211(a) as relates to the rates of the taxes imposed by sections 3101 and 3111)".

Subsec. (h). Pub. L. 98-76, § 225(c)(8), substituted “taxes imposed by section 3201” for “tax imposed under section 3201”, and struck out “; and tips so deemed to be paid in any month shall be deemed paid for services rendered in such month” after “time received”.

Subsec. (i). Pub. L. 98-76, § 225(b), added subsec. (i).

1981—Subsec. (e)(1). Pub. L. 97-34, § 743(a), inserted after third sentence provision that “Compensation which is paid in one calendar month but which would be payable in a prior or subsequent taxable month but for the fact that prescribed date of payment would fall on a Saturday, Sunday or legal holiday shall be deemed to have been paid in such prior or subsequent taxable month.”

Pub. L. 97-34, § 741(d)(2), struck out cl. (iii) exclusion from term “compensation” the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 3201, redesignated as cl. (iii) provisions formerly designated (iv).

Subsec. (e)(2). Pub. L. 97-34, § 743(b), (c), inserted first sentence respecting presumption of a payment through the employer’s payroll as being compensation for services rendered as an employee in the period with respect to which payment is made, and in second sentence following “an employee” inserted “receiving retroactive wage payments”.

Subsec. (e)(4). Pub. L. 97-123 added par. (4).

1978—Subsec. (g). Pub. L. 95-473 substituted “express carrier, sleeping car carrier, or rail carrier providing transportation subject to subchapter I of chapter 105 of title 49” for “express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act (49 U.S.C., chapter 1)”.

1976—Subsec. (a). Pub. L. 94-455, §§ 1903(a)(10)(A), 1906(b)(13)(A), struck out “44 Stat. 577;” before “45 U.S.C., chapter 8” and “or his delegate” after “Secretary”, respectively.

Subsec. (b). Pub. L. 94-455, § 1903(a)(10)(B), struck out in provisions following par. (4) “50 Stat. 312;” before “45 U.S.C. 228f”.

Subsec. (c). Pub. L. 94-455, § 1903(a)(10)(C), struck out “44 Stat. 577;” before “45 U.S.C. chapter 8”.

Subsec. (d)(7). Pub. L. 94-455, § 1903(a)(10)(D), struck out “50 Stat. 308;” before “45 U.S.C. 228a”.

Subsec. (e)(1). Pub. L. 94-547 provided that “compensation” not include 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 sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability, or an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred or reasonably expected to be incurred in the business of the employer provided any such payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment.

Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1975—Subsec. (e)(1). Pub. L. 94-93, § 204, substituted “paid to an individual for services rendered as an employee to one or more employers” for “earned by an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost”.

Pub. L. 94-92 increased from \$3 to \$25 amount of compensation earned in the service of a local lodge or divi-

sion of a railway-labor-organization employer to be disregarded with respect to any calendar month in the determination of amount of taxes under sections 3201 and 3221.

Subsec. (e)(2). Pub. L. 94-93, §§ 205, 206, substituted provision that an employee shall be deemed to be paid compensation in the period during which such compensation is earned only upon a written request by such employee, made within six months following the payment, and a showing that such compensation was earned during a period other than the period in which it was paid for provision that a payment made by an employer to an individual through the employer’s payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which payment is made.

1968—Subsec. (e)(1). Pub. L. 90-624 inserted provision excluding remuneration for service performed by non-resident alien individuals temporarily in the United States as participants in a cultural exchange or training program.

1965—Subsec. (e)(1). Pub. L. 89-212, § 2(b)(1), inserted “(except as is provided under paragraph (3))”.

Subsec. (e)(3). Pub. L. 89-212, § 2(b)(2), added par. (3).

Subsec. (h). Pub. L. 89-212, § 2(b)(3), added subsec. (h).  
1954—Subsec. (e)(1). Act Aug. 31, 1954, excluded from taxation compensation, for service as a delegate to a national or international convention of a railway labor organization, of any person who has no other previous creditable service.

#### 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 2004 AMENDMENT

Amendment by section 251(a)(2) 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)(2) 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.

##### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108-173, set out as a note under section 62 of this title.

##### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-90 applicable to calendar years beginning after Dec. 31, 2001, see section 204(f) of Pub. L. 107-90, set out as a note under section 24 of this title.

##### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104-191, set out as a note under section 62 of this title.

##### EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

##### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by 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 1990 AMENDMENT

Amendment by section 11331(c) 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.

## EFFECTIVE DATE OF 1989 AMENDMENTS

Pub. L. 101-239, title X, §10205(b), Dec. 19, 1989, 103 Stat. 2474 provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to—

“(A) group-term life insurance coverage in effect after December 31, 1989, and

“(B) remuneration paid before January 1, 1990, which the employer treated as compensation when paid.

“(2) EXCEPTION.—The amendment made by subsection (a) 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, 1989, 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.

“(3) BENEFIT DETERMINATIONS TO TAKE INTO ACCOUNT REMUNERATION ON WHICH TAX PAID.—The term ‘compensation’ as defined in section 1(h) of the Railroad Retirement Act of 1974 [45 U.S.C. 231(h)] includes any remuneration which is included in the term ‘compensation’ as defined in section 3231(e)(1) of the Internal Revenue Code of 1986 by reason of the amendment made by subsection (a).”

Pub. L. 101-239, title X, §10206(c), Dec. 19, 1989, 103 Stat. 2475, provided that:

“(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to remuneration paid after December 31, 1989.

“(2) SUBSECTION (b).—Except as otherwise provided in this subsection—

“(A) IN GENERAL.—The amendment made by subsection (b) [amending this section] shall apply to—

“(i) remuneration paid after December 31, 1989, and

“(ii) remuneration paid before January 1, 1990, which the employer treated as compensation when paid.

“(B) BENEFIT DETERMINATIONS TO TAKE INTO ACCOUNT REMUNERATION ON WHICH TAX PAID.—The term ‘compensation’ as defined in section 1(h) of the Railroad Retirement Act of 1974 [45 U.S.C. 231(h)] includes any remuneration which is included in the term ‘compensation’ as defined in section 3231(e)(1) of the Internal Revenue Code of 1986 by reason of the amendment made by subsection (b).

“(3) SPECIAL RULE FOR CERTAIN PAYMENTS.—For purposes of applying the amendment made by subsection (b) to remuneration paid after December 31, 1989, which would have been taken into account before January 1, 1990, if such amendments had applied to periods before January 1, 1990, 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).

“(4) EXCEPTION FOR CERTAIN 401(k) CONTRIBUTIONS.—The amendment made by subsection (b) shall not apply to employer contributions made during 1990 and attributable to services performed during 1989 under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986) if, under the terms of the arrangement as in effect on June 15, 1989—

“(A) the employee makes an election with respect to such contributions before January 1, 1990, and

“(B) the employer identifies the amount of such contribution before January 1, 1990.

“(5) SPECIAL RULE WITH RESPECT TO NONQUALIFIED DEFERRED COMPENSATION PLANS.—In the case of an agreement in existence on June 15, 1989, between a non-qualified deferred compensation plan (as defined in section 3121(v)(2)(C) of such Code) and an individual, the amendment made by subsection (b) shall apply with respect to services performed by the individual after December 31, 1989. The preceding sentence shall not apply in the case of a plan to which section 457(a) of such Code applies.”

Pub. L. 101-239, title X, §10207(c), Dec. 19, 1989, 103 Stat. 2476, provided that: “The amendments made by this section [amending this section] shall apply to remuneration paid after December 31, 1989.”

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

Amendment by section 1001(d)(2)(C)(ii) 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 1011B(a)(22)(B) of Pub. L. 100-647 not applicable to any individual who separated from service with the employer before Jan. 1, 1989, see section 1011B(a)(22)(F) of Pub. L. 100-647, set out as a note under section 3121 of this title.

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 122(e)(2) 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.

## EFFECTIVE DATE OF 1984 AMENDMENTS

Pub. L. 98-612, §1(d)(3), Oct. 31, 1984, 98 Stat. 3181, provided that: “The amendment made by subsection (c) [amending this section] shall apply to remuneration paid after December 31, 1984.”

Amendment by Pub. L. 98-611 applicable to remuneration paid after Dec. 31, 1984, see section 1(g)(3) of Pub. L. 98-611, set out as a note under section 127 of this title.

Amendment by 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.

## EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98-76, set out as a note under section 3201 of this title.

## EFFECTIVE DATE OF 1981 AMENDMENTS

Amendment by Pub. L. 97-123 applicable to remuneration paid after Dec. 31, 1981, except as otherwise provided, see section 3(g) of Pub. L. 97-123, set out as a note under section 3121 of this title.

Amendment by section 741(d)(2) of Pub. L. 97-34 applicable to compensation paid for services rendered after Sept. 30, 1981, see section 741(e) of Pub. L. 97-34, set out as a note under section 3201 of this title.

Pub. L. 97-34, title VII, §743(d), Aug. 13, 1981, 95 Stat. 349, provided that: “The amendments made by this section [amending this section] shall apply for taxable years beginning after December 31, 1981.”

## EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-547, §4(c)(2), Oct. 18, 1976, 90 Stat. 2527, provided that: “The amendments made by subsection (b) of

this section [amending this section] shall apply with respect to taxable years ending after December 31, 1953: *Provided, however*, That any taxes paid under the Railroad Retirement Tax Act [this chapter] prior to the date on which this Act is enacted [Oct. 18, 1976] shall not be affected or adjusted by reason of the amendments made by such subsection (b) except to the extent that the applicable period of limitation for the assessment of tax and the filing of a claim for credit or refund has not expired prior to the date on which this Act is enacted. If the applicable period of limitation for the filing of a claim for credit or refund would expire within the six-month period following the date on which this Act is enacted, the applicable period for the filing of such a claim for credit or refund shall be extended to include such six-month period.”

#### EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by sections 204 and 205 of Pub. L. 94-93 applicable for taxable years ending on or after Aug. 9, 1975, and for taxable years ending before Aug. 9, 1975, as to which the period for assessment and collection of tax or the filing of a claim for credit or refund has not expired on Aug. 9, 1975, and amendment by section 206 of Pub. L. 94-93 applicable for taxable years beginning on or after Aug. 9, 1975: *Provided, however*, That with respect to payment made prior to Aug. 9, 1975, the employee may file a written request under section 206 of Pub. L. 94-93 within six months after Aug. 9, 1975, see section 207 of Pub. L. 94-93, set out as a note under section 3201 of this title.

Amendment by Pub. L. 94-92 effective Jan. 1, 1975, and applicable only with respect to compensation paid for services rendered on or after Jan. 1, 1975, see section 203(c) of Pub. L. 94-92, set out as a note under section 1402 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90-624, §4(a), Oct. 22, 1968, 82 Stat. 1316, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) The amendments made by the first two sections of this Act [amending this section and section 228a of Title 45, Railroads] shall apply with respect to service performed after December 31, 1961.

“(2) Notwithstanding the expiration before the date of the enactment of this Act [Oct. 22, 1968] or within 6 months after such date of the period for filing claim for credit or refund, claim for credit or refund of any overpayment of any tax imposed by chapter 22 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, 26 U.S.C. 3201 et seq.] attributable to the amendment made by the first section of this Act [amending this section] may be filed at any time within one year after such date of enactment.

“(3) Any credit or refund of an overpayment of the tax imposed by section 3201 or 3211 of the Internal Revenue Code of 1986 which is attributable to the amendment made by the first section of this Act shall be appropriately adjusted for any lump-sum payment which has been made under section 5(f)(2) of the Railroad Retirement Act of 1937 [section 228e(f)(2) of Title 45] before the date of the allowance of such credit or the making of such refund.”

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-212 effective only with respect to tips received after 1965, see section 6 of Pub. L. 89-212, set out as a note under section 3201 of this title.

#### EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 31, 1954, effective as if enacted as a part of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], see section 407 of act Aug. 31, 1954, as amended, set out as a note under section 3201 of this title.

#### REGULATIONS

For provisions requiring that the regulations prescribed under subsec. (e)(4) of this section prescribe

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 this title (relating to receipts for employees) with respect to the wages or compensation involved, see section 3(d) of Pub. L. 97-123, set out as a note under section 3121 of this title.

#### EXCLUSION FROM WAGES AND COMPENSATION OF RE-FUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS

For purposes of this chapter, the term “compensation” 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.

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

For purposes of applying subsec. (e) of this section with respect to subsec. (e)(4) of this section, payments under a State temporary disability law to be treated as remuneration for service, see section 3(e) of Pub. L. 97-123, set out as a note under section 3121 of this title.

### § 3232. Court jurisdiction

The several district courts of the United States shall have jurisdiction to entertain an application by the Attorney General on behalf of the Secretary to compel an employee or other person residing within the jurisdiction of the court or an employer subject to service of process within its jurisdiction to comply with any obligations imposed on such employee, employer, or other person under the provisions of this chapter. The jurisdiction herein specifically conferred upon such Federal courts shall not be held exclusive of any jurisdiction otherwise possessed by such courts to entertain civil actions, whether legal or equitable in nature, in aid of the enforcement of rights or obligations arising under the provisions of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 437; 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”.

### § 3233. Short title

This chapter may be cited as the “Railroad Retirement Tax Act.”

(Aug. 16, 1954, ch. 736, 68A Stat. 438.)

### Subchapter E—Tier 2 Tax Rate Determination

Sec.

3241. Determination of tier 2 tax rate based on average account benefits ratio.

### § 3241. Determination of tier 2 tax rate based on average account benefits ratio

#### (a) In general

For purposes of sections 3201(b), 3211(b), and 3221(b), the applicable percentage for any cal-