

1970—Pub. L. 91-373 increased the rate from 3.1 percent to 3.2 percent and struck out provisions setting special rates for wages paid during 1962 and 1963.

1963—Pub. L. 88-31 reduced the tax rate for the year 1963 from 3.5 percent to 3.35 percent.

1961—Pub. L. 87-6 provided for a tax rate of 3.5 percent for calendar years 1962 and 1963.

1960—Pub. L. 86-778 substituted “1961” for “1955” and “3.1 percent” for “3 percent”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-92, §10(b), Nov. 6, 2009, 123 Stat. 2989, provided that: “The amendments made by this section [amending this section] shall apply to wages paid after December 31, 2009.”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. B, title IV, §404(b), Oct. 3, 2008, 122 Stat. 3860, provided that: “The amendments made by this section [amending this section] shall apply to wages paid after December 31, 2008.”

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-140, title XV, §1501(b), Dec. 19, 2007, 121 Stat. 1800, provided that: “The amendments made by this section [amending this section] shall apply to wages paid after December 31, 2007.”

Amendment by Pub. L. 110-140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110-140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, §11333(b), Nov. 5, 1990, 104 Stat. 1388-470, provided that: “The amendments made by this section [amending this section] shall apply to wages paid after December 31, 1990.”

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title IX, §9153(b), Dec. 22, 1987, 101 Stat. 1330-326, provided that: “The amendment made by subsection (a) [amending this section] shall apply to wages paid on or after January 1, 1988.”

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-248, title II, §271(d)(1), (2), formerly §271(b)(1), (2), Sept. 3, 1982, 96 Stat. 555, as redesignated by Pub. L. 98-601, §1(a), Oct. 30, 1984, 98 Stat. 3147, provided that:

“(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) [amending this section, sections 3306 and 6157 of this title, and sections 1101 and 1105 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1982.

“(2) SUBSECTION (c).—The amendments made by subsection (c) [amending this section, sections 3302 and 6157 of this title, and section 1101 of Title 42] shall apply to remuneration paid after December 31, 1984.”

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-566, title II, §211(d)(2), Oct. 20, 1976, 90 Stat. 2677, provided that: “The amendment made by subsection (b) [amending this section] shall apply to remuneration paid after December 31, 1976.”

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91-373, title III, §301(a), Aug. 10, 1970, 84 Stat. 713, provided that the amendment made by that section is effective with respect to remuneration paid after Dec. 31, 1969.

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86-778, title V, §523(c), Sept. 13, 1960, 74 Stat. 982, provided that: “The amendments made by subsection (a) [amending this section] shall apply only

with respect to the calendar year 1961 and calendar years thereafter.”

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.

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.

§ 3302. Credits against tax

(a) Contributions to State unemployment funds

(1) The taxpayer may, to the extent provided in this subsection and subsection (c), credit against the tax imposed by section 3301 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State which is certified as provided in section 3304 for the 12-month period ending on October 31 of such year.

(2) The credit shall be permitted against the tax for the taxable year only for the amount of contributions paid with respect to such taxable year.

(3) The credit against the tax for any taxable year shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required under section 6071 to file a return for such year; except that credit shall be permitted for contributions paid after such last day, but such credit shall not exceed 90 percent of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day.

(4) Upon the payment of contributions into the unemployment fund of a State which are required under the unemployment compensation law of that State with respect to remuneration on the basis of which, prior to such payment into the proper fund, the taxpayer erroneously paid an amount as contributions under another unemployment compensation law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions with respect to services subject to such other law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made on the date the return for the taxable year was filed under section 6071.

(5) In the case of wages paid by the trustee of an estate under title 11 of the United States Code, if the failure to pay contributions on time was without fault by the trustee, paragraph (3) shall be applied by substituting “100 percent” for “90 percent”.

(b) Additional credit

In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 3301 for any taxable year an amount, with respect to the unemployment compensation law of each State certified as provided in section 3303 for the 12-month period ending on October 31 of such year, or with respect to any provisions thereof so certified, equal to the amount, if any, by which the contributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have been required to pay if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in such 12-month period to any person having individuals in his employ, or to a rate of 5.4 percent, whichever rate is lower.

(c) Limit on total credits

(1) The total credits allowed to a taxpayer under this section shall not exceed 90 percent of the tax against which such credits are allowable.

(2) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act, then the total credits (after applying subsections (a) and (b) and paragraph (1) of this subsection) otherwise allowable under this section for the taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A)(i) in the case of a taxable year beginning with the second consecutive January 1 as of the beginning of which there is a balance of such advances, by 5 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

(ii) in the case of any succeeding taxable year beginning with a consecutive January 1 as of the beginning of which there is a balance of such advances, by an additional 5 percent, for each such succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State;

(B) in the case of a taxable year beginning with the third or fourth consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any), multiplied by a fraction, the numerator of which is the State's average annual wage in covered employment for the calendar year in which the determination is made and the denominator of which is the wage base under this chapter, by which—

(i) 2.7 percent multiplied by a fraction, the numerator of which is the wage base under this chapter and the denominator of which is the estimated United States average annual wage in covered employment for the calendar year in which the determination is to be made, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year; and

(C) in the case of a taxable year beginning with the fifth or any succeeding consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any) by which—

(i) the 5-year benefit cost rate applicable to such State for such taxable year or (if higher) 2.7 percent, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year.

Subparagraph (C) shall not apply with respect to any taxable year to which it would otherwise apply (but subparagraph (B) shall apply to such taxable year) if the Secretary of Labor determines (on or before November 10 of such taxable year) that the State meets the requirements of subsection (f)(2)(B) for such taxable year.

(3) If the Secretary of Labor determines that a State, or State agency, has not—

(A) entered into the agreement described in section 239 of the Trade Act of 1974, with the Secretary of Labor before July 15, 1975, or

(B) fulfilled its commitments under an agreement with the Secretary of Labor as described in section 239 of the Trade Act of 1974,

then, in the case of a taxpayer subject to the unemployment compensation law of such State, the total credits (after applying subsections (a) and (b) and paragraphs (1) and (2) of this section) otherwise allowable under this section for a year during which such State or agency does not enter into or fulfill such an agreement shall be reduced by 7½ percent of the tax imposed with respect to wages paid by such taxpayer during such year which are attributable to such State.

(d) Definitions and special rules relating to subsection (c)**(1) Rate of tax deemed to be 6 percent**

In applying subsection (c), the tax imposed by section 3301 shall be computed at the rate of 6 percent in lieu of the rate provided by such section.

(2) Wages attributable to a particular State

For purposes of subsection (c), wages shall be attributable to a particular State if they are subject to the unemployment compensation law of the State, or (if not subject to the unemployment compensation law of any State) if they are determined (under rules or regulations prescribed by the Secretary) to be attributable to such State.

(3) Additional taxes inapplicable where advances are repaid before November 10 of taxable year

Paragraph (2) of subsection (c) shall not apply with respect to any State for the taxable year if (as of the beginning of November 10 of such year) there is no balance of advances referred to in such paragraph.

(4) Average employer contribution rate

For purposes of subparagraphs (B) and (C) of subsection (c)(2), the average employer contribution rate for any State for any calendar year is that percentage obtained by dividing—

(A) the total of the contributions paid into the State unemployment fund with respect to such calendar year, by

(B)(i) for purposes of subparagraph (B) of subsection (c)(2), the total of the wages (as determined without any limitation on amount) attributable to such State subject to contributions under this chapter with respect to such calendar year, and

(ii) for purposes of subparagraph (C) of subsection (c)(2), the total of the remuneration subject to contributions under the State unemployment compensation law with respect to such calendar year.

For purposes of subparagraph (C) of subsection (c)(2), if the average employer contribution rate for any State for any calendar year (determined without regard to this sentence) equals or exceeds 2.7 percent, such rate shall be determined by increasing the amount taken into account under subparagraph (A) of the preceding sentence by the aggregate amount of employee payments (if any) into the unemployment fund of such State with respect to such calendar year which are to be used solely in the payment of unemployment compensation.

(5) 5-year benefit cost rate

For purposes of subparagraph (C) of subsection (c)(2), the 5-year benefit cost rate applicable to any State for any taxable year is that percentage obtained by dividing—

(A) one-fifth of the total of the compensation paid under the State unemployment compensation law during the 5-year period ending at the close of the second calendar year preceding such taxable year, by

(B) the total of the remuneration subject to contributions under the State unemployment compensation law with respect to the first calendar year preceding such taxable year.

(6) Rounding

If any percentage referred to in either subparagraph (B) or (C) of subsection (c)(2) is not a multiple of .1 percent, it shall be rounded to the nearest multiple of .1 percent.

(7) Determination and certification of percentages

The percentage referred to in subsection (c)(2)(B) or (C) for any taxable year for any State having a balance referred to therein shall be determined by the Secretary of Labor, and shall be certified by him to the Secretary of the Treasury before June 1 of such year, on the basis of a report furnished by such State to the Secretary of Labor before May 1 of such year. Any such State report shall be made as of the close of March 31 of the taxable year, and shall be made on such forms, and shall contain such information, as the Secretary of Labor deems necessary to the performance of his duties under this section.

(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).

(f) Limitation on credit reduction

(1) Limitation

In the case of any State which meets the requirements of paragraph (2) with respect to any taxable year the reduction under subsection (c)(2) in credits otherwise applicable to taxpayers subject to the unemployment compensation law of such State shall not exceed the greater of—

(A) the reduction which was in effect with respect to such State under subsection (c)(2) for the preceding taxable year, or

(B) 0.6 percent of the wages paid by the taxpayer during such taxable year which are attributable to such State.

(2) Requirements

The requirements of this paragraph are met by any State with respect to any taxable year if the Secretary of Labor determines (on or before November 10 of such taxable year) that—

(A) no State action was taken during the 12-month period ending on September 30 of such taxable year (excluding any action required under State law as in effect prior to the date of the enactment of this subsection) which has resulted or will result in a reduction in such State's unemployment tax effort (as defined by the Secretary of Labor in regulations),

(B) no State action was taken during the 12-month period ending on September 30 of such taxable year (excluding any action required under State law as in effect prior to the date of the enactment of this subsection) which has resulted or will result in a net decrease in the solvency of the State unemployment compensation system (as defined by the Secretary of Labor in regulations),

(C) the State unemployment tax rate for the taxable year equals or exceeds the average benefit cost ratio for calendar years in the 5-calendar year period ending with the last calendar year before the taxable year, and

(D) the outstanding balance for such State of advances under title XII of the Social Se-

curity Act on September 30 of such taxable year was not greater than the outstanding balance for such State of such advances on September 30 of the third preceding taxable year.

(3) Credit reductions for subsequent years

If the credit reduction under subsection (c)(2) is limited by reason of paragraph (1) of this subsection for any taxable year, for purposes of applying subsection (c)(2) to subsequent taxable years (including years after 1987), the taxable year for which the credit reduction was so limited (and January 1 thereof) shall not be taken into account.

(4) State unemployment tax rate

For purposes of this subsection, the State unemployment tax rate for any taxable year is the percentage obtained by dividing—

(A) the total amount of contributions paid into the State unemployment fund with respect to such taxable year, by

(B) the total amount of the remuneration subject to contributions under the State unemployment compensation law with respect to such taxable year (determined without regard to any limitation on the amount of wages subject to contribution under the State law).

(5) Benefit cost ratio

For purposes of this subsection—

(A) In general

The benefit cost ratio for any calendar year is the percentage determined by dividing—

(i) the sum of the total of the compensation paid under the State unemployment compensation law during such calendar year and any interest paid during such calendar year on advances made to the State under title XII of the Social Security Act, by

(ii) the total amount of the remuneration subject to contributions under the State unemployment compensation law with respect to such calendar year (determined without regard to any limitation on the amount of remuneration subject to contribution under the State law).

(B) Reimbursable benefits not taken into account

For purposes of subparagraph (A), compensation shall not be taken into account to the extent—

(i) the State is entitled to reimbursement for such compensation under the provisions of any Federal law, or

(ii) such compensation is attributable to services performed for a reimbursing employer.

(C) Reimbursing employer

The term “reimbursing employer” means any governmental entity or other organization (or group of governmental entities or any other organizations) which makes reimbursements in lieu of contributions to the State unemployment fund.

(D) Rounding

If any percentage determined under subparagraph (A) is not a multiple of .1 percent,

such percentage shall be reduced to the nearest multiple of .1 percent.

(6) Reports

The Secretary of Labor may, by regulations, require a State to furnish such information at such time and in such manner as may be necessary for purposes of this subsection.

(7) Definitions and special rules

The definitions and special rules set forth in subsection (d) shall apply to this subsection in the same manner as they apply to subsection (c).

(8) Partial limitation

(A) In the case of a State which would meet the requirements of this subsection for a taxable year prior to 1986 but for its failure to meet one of the requirements contained in subparagraph (C) or (D) of paragraph (2), the reduction under subsection (c)(2) in credits otherwise applicable to taxpayers in such State for such taxable year and each subsequent year (in a period of consecutive years for each of which a credit reduction is in effect for taxpayers in such State) shall be reduced by 0.1 percentage point.

(B) In the case of a State which does not meet the requirements of paragraph (2) but meets the requirements of subparagraphs (A) and (B) of paragraph (2) and which also meets the requirements of section 1202(b)(8)(B) of the Social Security Act with respect to such taxable year, the reduction under subsection (c)(2) in credits otherwise applicable to taxpayers in such State for such taxable year and each subsequent year (in a period of consecutive years for each of which a credit reduction is in effect for taxpayers in such State) shall be further reduced by an additional 0.1 percentage point.

(C) In no case shall the application of subparagraphs (A) and (B) reduce the credit reduction otherwise applicable under subsection (c)(2) below the limitation under paragraph (1).

(g) Credit reduction not to apply when State makes certain repayments

(1) In general

In the case of any State which meets requirements of paragraph (2) with respect to any taxable year, subsection (c)(2) shall not apply to such taxable year; except that such taxable year (and January 1 of such taxable year) shall (except as provided in subsection (f)(3)) be taken into account for purposes of applying subsection (c)(2) to succeeding taxable years.

(2) Requirements

The requirements of this paragraph are met by any State with respect to any taxable year if the Secretary of Labor determines that—

(A) the repayments during the 1-year period ending on November 9 of such taxable year made by such State of advances under title XII of the Social Security Act are not less than the sum of—

(i) the potential additional taxes for such taxable year, and

(ii) any advances made to such State during such 1-year period under such title XII,

(B) there will be sufficient amounts in the State unemployment fund to pay all compensation during the 3-month period beginning on November 1 of such taxable year without receiving any advance under title XII of the Social Security Act, and

(C) there is a net increase in the solvency of the State unemployment compensation system for the taxable year attributable to changes made in the State law after the date on which the first advance taken into account in determining the amount of the potential additional taxes was made (or, if later, after the date of the enactment of this subsection) and such net increase equals or exceeds the potential additional taxes for such taxable year.

(3) Definitions

For purposes of paragraph (2)—

(A) Potential additional taxes

The term “potential additional taxes” means, with respect to any State for any taxable year, the aggregate amount of the additional tax which would be payable under this chapter for such taxable year by all taxpayers subject to the unemployment compensation law of such State for such taxable year if paragraph (2) of subsection (c) had applied to such taxable year and any preceding taxable year without regard to this subsection but with regard to subsection (f).

(B) Treatment of certain reductions

Any reduction in the State’s balance under section 901(d)(1) of the Social Security Act shall not be treated as a repayment made by such State.

(4) Reports

The Secretary of Labor may require a State to furnish such information at such time and in such manner as may be necessary for purposes of paragraph (2).

(h) Treatment of certified professional employer organizations

If a certified professional employer organization (as defined in section 7705), or a customer of such organization, makes a contribution to the State’s unemployment fund with respect to wages paid to a work site employee, such certified professional employer organization shall be eligible for the credits available under this section with respect to such contribution.

(Aug. 16, 1954, ch. 736, 68A Stat. 439; Pub. L. 86-778, title V, §523(b), Sept. 13, 1960, 74 Stat. 980; Pub. L. 87-6, §14(b), Mar. 24, 1961, 75 Stat. 16; Pub. L. 87-321, §1(a), Sept. 26, 1961, 75 Stat. 683; Pub. L. 88-31, §2(b), May 29, 1963, 77 Stat. 51; Pub. L. 88-173, §1(a)-(c), Nov. 7, 1963, 77 Stat. 305; Pub. L. 91-373, title I, §142(a), (b), Aug. 10, 1970, 84 Stat. 707; Pub. L. 93-618, title II, §239(e), Jan. 3, 1975, 88 Stat. 2025; Pub. L. 94-45, title I, §110(a), title III, §302, June 30, 1975, 89 Stat. 239, 243; Pub. L. 94-455, title XIX, §§1903(a)(12), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1808, 1834; Pub. L. 95-19, title II, §201(a), Apr. 12, 1977, 91 Stat. 43; Pub. L. 96-589, §6(f), Dec. 24, 1980, 94 Stat. 3409; Pub. L. 97-35, title XXIV, §2406(a), Aug. 13, 1981, 95 Stat. 876; Pub. L. 97-248, title II, §§271(c)(2), (3)(A), (B),

272(a), 273(a), Sept. 3, 1982, 96 Stat. 555-557; Pub. L. 98-21, title V, §§512(a)(1), (b), 513(a)-(c), Apr. 20, 1983, 97 Stat. 146, 147; Pub. L. 99-514, title XVIII, §1884(1), (2), Oct. 22, 1986, 100 Stat. 2919; Pub. L. 113-295, div. A, title II, §221(a)(101), div. B, title II, §206(c)(1), Dec. 19, 2014, 128 Stat. 4052, 4070; Pub. L. 115-141, div. U, title IV, §401(b)(38), (39), Mar. 23, 2018, 132 Stat. 1204.)

Editorial Notes

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (c)(2), (f)(2)(D), (5)(A)(i), (8)(B), and (g)(2)(A), (B), (3)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title XII of the Social Security Act is classified generally to subchapter XII (§1321 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 901(d)(1) and 1202(b)(8)(B) of the Social Security Act are classified to sections 1101(d)(1) and 1322(b)(8)(B), respectively, of Title 42. For complete classification of this act to the Code, see section 1305 of Title 42 and Tables.

Section 239 of the Trade Act of 1974, referred to in subsec. (c)(3)(A), (B), is classified to subsec. (c)(3) of this section and to section 2311 of Title 19, Customs Duties.

The date of the enactment of this subsection, referred to in subsec. (f)(2)(A), (B), means the date of the enactment of Pub. L. 97-35 which was approved Aug. 13, 1981.

The date of the enactment of this subsection, referred to in subsec. (g)(2)(C), means the date of the enactment of Pub. L. 97-248, which was approved Sept. 3, 1982.

AMENDMENTS

2018—Subsec. (c)(2). Pub. L. 115-141, §401(b)(38), struck out at beginning of concluding provisions “The provisions of the preceding sentence shall not be applicable with respect to the taxable year beginning January 1, 1975, or any succeeding taxable year which begins before January 1, 1980; and, for purposes of such sentence, January 1, 1980, shall be deemed to be the first January 1 occurring after January 1, 1974, and consecutive taxable years in the period commencing January 1, 1980, shall be determined as if the taxable year which begins on January 1, 1980, were the taxable year immediately succeeding the taxable year which began on January 1, 1974.”

Subsec. (f)(2). Pub. L. 115-141, §401(b)(39)(B), struck out concluding provisions which read as follows: “The requirements of subparagraphs (C) and (D) shall not apply to taxable years 1981 and 1982.”

Subsec. (f)(2)(D). Pub. L. 115-141, §401(b)(39)(A), struck out “(or, for purposes of applying this subparagraph to taxable year 1983, September 30, 1981)” before period at end.

2014—Subsec. (f)(4). Pub. L. 113-295, §221(a)(101)(A), substituted “subsection, the” for “subsection—”, subpar. (A) designation and heading “In general”, and “The”; redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and realigned margins; and struck out former subpar. (B) which related to treatment of additional tax under this chapter for taxable years 1983 and 1984.

Subsec. (f)(5)(D), (E). Pub. L. 113-295, §221(a)(101)(B), redesignated subpar. (E) as (D) and struck out former subpar. (D) which related to special rules for years before 1985.

Subsec. (h). Pub. L. 113-295, §206(c)(1), added subsec. (h).

1986—Subsec. (c)(2)(B). Pub. L. 99-514, §1884(1), substituted “denominator” for second reference to “determination”, and in cl. (i) inserted “percent” after “2.7” and struck out “percent” after “is to be made”.

Subsec. (f)(8)(A). Pub. L. 99-514, §1884(2), substituted “1986” for “1987”.

1983—Subsec. (c)(2)(B). Pub. L. 98-21, §513(c), inserted “, multiplied by a fraction, the numerator of which is the State’s average annual wage in covered employ-

ment for the calendar year in which the determination is made and the determination of which is the wage base under this chapter.” in provisions preceding cl. (i).

Subsec. (c)(2)(B)(i). Pub. L. 98-21, §513(b), inserted “multiplied by a fraction, the numerator of which is the wage base under this chapter and the denominator of which is the estimated United States average annual wage in covered employment for the calendar year in which the determination is to be made” after “2.7”.

Subsec. (d)(4)(B). Pub. L. 98-21, §513(a), amended subpar. (B) generally, adding cl. (i), designating existing provisions as cl. (ii), and inserting reference to purposes of subsec. (c)(2)(C).

Subsec. (f)(1). Pub. L. 98-21, §512(b), struck out “beginning before January 1, 1988,” after “any taxable year”.

Subsec. (f)(8). Pub. L. 98-21, §512(a)(1), added par. (8). 1982—Subsec. (b). Pub. L. 97-248, §271(c)(2)(A), substituted “5.4 percent” for “2.7 percent”.

Subsec. (c)(2). Pub. L. 97-248, §273(a), inserted provision at end that subpar. (C) shall not apply with respect to any taxable year to which it would otherwise apply (but that subpar. (B) would apply to such taxable year) if the Secretary of Labor determines (on or before Nov. 10 of such taxable year) that the State meets the requirements of subsec. (f)(2)(B) of this section for such taxable year.

Subsec. (c)(2)(A). Pub. L. 97-248, §271(c)(3)(A), substituted “5 percent” for “10 percent” in two places.

Subsec. (c)(3). Pub. L. 97-248, §271(c)(3)(B), substituted “7½ percent” for “15 percent” in provisions following subpar. (B).

Subsec. (d)(1). Pub. L. 97-248, §271(c)(2)(B), substituted “6 percent” for “3 percent” in par. heading and text.

Subsec. (g). Pub. L. 97-248, §272(a), added subsec. (g). 1981—Subsec. (f). Pub. L. 97-35 added subsec. (f). 1980—Subsec. (a)(5). Pub. L. 96-589 added par. (5).

1977—Subsec. (c)(2). Pub. L. 95-19 substituted “January 1, 1980” for “January 1, 1978” wherever appearing. 1976—Subsec. (a)(1). Pub. L. 94-455, §1903(a)(12)(A), struck out “(10-month period in the case of October 31, 1972)” after “ending on October 31 of such year”.

Subsec. (b). Pub. L. 94-455, §1903(a)(12)(B), struck out “(10-month period in the case of October 31, 1972)” after “ending on October 31, of such year” and substituted “12-month period” for “12 or 10-month period, as the case may be.”.

Subsec. (c)(2). Pub. L. 94-455, §1903(a)(12)(C)(i), (ii), redesignated par. (3) as (2), struck out “on or after the date of the enactment of the Employment Security Act of 1960” after “title XII of the Social Security Act”, and substituted “paragraph (1)” for “paragraphs (1) and (2). Former par. (2), which related to the computation of the reduction of the total credits allowable to a taxpayer with respect to advances made to the unemployment account, was struck out.

Subsec. (c)(3), (4). Pub. L. 94-455, §1903(a)(12)(C)(i), (iii), redesignated par. (4) as (3) and substituted “paragraphs (1) and (2)” for “paragraphs (1), (2), and (3)”. Former par. (3) redesignated (2).

Subsec. (d)(2). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (d)(3). Pub. L. 94-455, §1903(a)(12)(C)(iv), struck out “or (3)” after “Paragraph (2)”.

Subsec. (d)(4) to (6). Pub. L. 94-455, §1903(a)(12)(C)(v), substituted “subsection (c)(2)” for “subsection (c)(3)”.

Subsec. (d)(7). Pub. L. 94-455, §1903(a)(12)(C)(vi), substituted “subsection (c)(2)(B) or (C)” for “subsection (c)(3)(B) or (C)”.

Subsec. (d)(8). Pub. L. 94-455, §1903(a)(12)(D), struck out par. (8) which provided for a cross reference to section 104 of the Temporary Unemployment Compensation Act of 1958 relating to the reduction of total credits allowable under subsec. (c) of this section.

1975—Subsec. (c)(3). Pub. L. 94-45, §110(a), provided that par. (3) shall not be applicable with respect to the taxable year beginning Jan. 1, 1975, or any succeeding taxable year which begins before Jan. 1, 1978, and that, for the purposes of par. (3), Jan. 1, 1978, shall be deemed to be the first Jan. 1 occurring after Jan. 1, 1974, and

consecutive taxable years in the period commencing Jan. 1, 1978, shall be determined as if the taxable year which begins Jan. 1, 1978, were the taxable year immediately succeeding the taxable year which began on Jan. 1, 1974.

Subsec. (c)(4). Pub. L. 94-45, §302, substituted “July 15, 1975” for “July 1, 1975”.

Pub. L. 93-618 added par. (4).

1970—Subsec. (a)(1). Pub. L. 91-373, §142(a), substituted “certified as provided in section 3304 for the 12-month period ending on October 31 of such year (10-month period in the case of October 31, 1972)” for “certified for the taxable year as provided in section 3304”.

Subsec. (b). Pub. L. 91-373, §142(b), changed the certification date from December 31 to October 31, with a provision for a 10-month period in the case of October 31, 1972, and provided for certification based on a 12-month period ending each October 31.

1963—Subsec. (c). Pub. L. 88-173, in cl. (2), substituted “on January 1, 1963 (and in the case of any succeeding taxable year beginning before January 1, 1968),” for “with the fourth consecutive January 1”, in subpar. (A), and “on or after January 1, 1968,” for “with a consecutive January 1”, in subpar. (B), and inserted paragraph following subpar. (B).

Subsec. (d)(1). Pub. L. 88-31 substituted “the rate provided by such section” for “3.1 percent (or, in the case of the tax imposed with respect to the calendar years 1962 and 1963, in lieu of 3.5 percent)”.

1961—Subsec. (d)(1). Pub. L. 87-6 provided for computation of the tax at the rate of 3 percent in lieu of 3.5 percent for calendar years 1962 and 1968.

Subsec. (e). Pub. L. 87-321 added subsec. (e).

1960—Subsec. (c). Pub. L. 86-778 restricted cl. (2) to advances made before the date of the enactment of the Employment Security Act of 1960, added cl. (3), and struck out provisions which related to the attributing of wages to a particular State, which provisions are now covered by subsec. (d)(2).

Subsec. (d). Pub. L. 86-778 added subsec. (d).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-295, div. B, title II, §206(g)(1), Dec. 19, 2014, 128 Stat. 4071, provided that: “The amendments made by this section [enacting sections 3511 and 7705 of this title and amending this section and sections 3303, 6053, 6652, and 7528 of this title] shall apply with respect to wages for services performed on or after January 1 of the first calendar year beginning more than 12 months after the date of the enactment of this Act [Dec. 19, 2014].”

Amendment by section 221(a)(101) of 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 1983 AMENDMENT

Pub. L. 98-21, title V, §512(a)(2), Apr. 20, 1983, 97 Stat. 146, provided that: “The amendment made by paragraph (1) [amending this section] shall apply with respect to taxable year 1983 and taxable years thereafter.”

Pub. L. 98-21, title V, §513(d), Apr. 20, 1983, 97 Stat. 147, provided that: “The amendments made by this section [amending this section] shall be effective for taxable year 1983 and taxable years thereafter.”

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 271(c)(2), (3)(A), (B) of Pub. L. 97-248 applicable to remuneration paid after Dec. 31, 1984, see section 271(d)(2) of Pub. L. 97-248, as amended, set out as a note under section 3301 of this title.

Pub. L. 97-248, title II, §272(b), Sept. 3, 1982, 96 Stat. 557, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1982.”

Pub. L. 97-248, title II, §273(b), Sept. 3, 1982, 96 Stat. 557, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1982.”

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-35, title XXIV, §2406(b), Aug. 13, 1981, 95 Stat. 878, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1980.”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-589 effective Oct. 1, 1979, but not to apply to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96-589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91-373, title I, §142(i), Aug. 10, 1970, 84 Stat. 708, provided that: “The amendments made by this section [amending this section and sections 3303 and 3304 of this title] shall apply with respect to the taxable year 1972 and taxable years thereafter.”

EFFECTIVE DATE OF 1963 AMENDMENT

Pub. L. 88-173, §1(d), Nov. 7, 1963, 77 Stat. 306, provided that: “The amendments made by subsections (a), (b), and (c) of this section [amending this section] shall apply only with respect to taxable years beginning on or after January 1, 1963.”

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87-321, §1(b), Sept. 26, 1961, 75 Stat. 683, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to the calendar year 1961 and each calendar year thereafter.”

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.

CONSTRUCTION

Pub. L. 113-295, div. B, title II, §206(h), Dec. 19, 2014, 128 Stat. 4071, provided that: “Nothing contained in this section [enacting sections 3511 and 7705 of this title, amending this section and sections 3303, 6053, 6652, and 7528 of this title, and enacting provisions set out as notes under this section and section 7705 of this title] or the amendments made by this section shall be construed to create any inference with respect to the determination of who is an employee or employer—

“(1) for Federal tax purposes (other than the purposes set forth in the amendments made by this section), or

“(2) for purposes of any other provision of law.”

EXTENSION OF PERIOD FOR REPAYMENT OF FEDERAL LOANS TO STATE UNEMPLOYMENT FUNDS

Pub. L. 102-318, title III, §304, July 3, 1992, 106 Stat. 298, provided that:

“(a) GENERAL RULE.—If the Secretary of Labor determines that a State meets the requirements of subsection (b), paragraph (2) of section 3302(c) of the Internal Revenue Code of 1986 shall be applied with respect to such State for taxable years after 1991—

“(1) by substituting ‘third’ for ‘second’ in subparagraph (A)(i),

“(2) by substituting ‘fourth or fifth’ for ‘third or fourth’ in subparagraph (B), and

“(3) by substituting ‘sixth’ for ‘fifth’ in subparagraph (C).

“(b) REQUIREMENTS.—A State meets the requirements of this subsection if, during calendar year 1992 or 1993, the State amended its unemployment compensation law to increase estimated contributions required under such law by at least 25 percent.

“(c) SPECIAL RULE.—This section shall not apply to any taxable year after 1994 unless—

“(1) such taxable year is in a series of consecutive taxable years as of the beginning of each of which there was a balance referred to in section 3302(c)(2) of such Code, and

“(2) such series includes a taxable year beginning in 1992, 1993, or 1994.”

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.

TRANSITIONAL RULE FOR CERTAIN EMPLOYEES AND SMALL BUSINESSES

Pub. L. 97-248, title II, §271(d)(3), (4), formerly §271(b)(3), Sept. 3, 1982, 96 Stat. 555, as redesignated and amended by Pub. L. 98-601, §1(a), Oct. 30, 1984, 98 Stat. 3147; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(3) TRANSITIONAL RULE FOR CERTAIN EMPLOYEES.—

“(A) IN GENERAL.—Notwithstanding section 3303 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the case of taxable years beginning after December 31, 1984, and before January 1, 1989, a taxpayer shall be allowed the additional credit under section 3302(b) of such Code with respect to any employee covered by a qualified specific industry provision if the requirements of subparagraph (B) are met with respect to such employee.

“(B) REQUIREMENTS.—The requirements of this subparagraph are met for any taxable year with respect to any employee covered by a specific industry provision if the amount of contributions required to be paid for the taxable year to the unemployment fund of the State with respect to such employee are not less than the product of the required rate multiplied by the wages paid by the employer during the taxable year.

“(C) REQUIRED RATE.—For purposes of subparagraph (B), the required rate for any taxable year is the sum of—

“(i) the rate at which contributions were required to be made under the specific industry provision as in effect on August 10, 1982, and

“(ii) the applicable percentage of the excess of 5.4 percent over the rate described in clause (i).

“(D) APPLICABLE PERCENTAGE.—For purposes of subparagraph (C), the term ‘applicable percentage’ means—

“(i) 20 percent in the case of taxable year 1985,

“(ii) 40 percent in the case of taxable year 1986,

“(iii) 60 percent in the case of taxable year 1987, and

“(iv) 80 percent in the case of taxable year 1988.

“(E) QUALIFIED SPECIFIC INDUSTRY PROVISION.—For purposes of this paragraph, the term, ‘qualified specific industry provision’ means a provision contained in a State unemployment compensation law (as in effect on August 10, 1982)—

“(i) which applies to employees in a specific industry or to an otherwise defined type of employees, and

“(ii) under which employers may elect to make contributions at a specified rate (without experience rating) which exceeds 2.7 percent.

“(4) TRANSITIONAL RULE FOR CERTAIN SMALL BUSINESSES.—

“(A) IN GENERAL.—Notwithstanding section 3303 of the Internal Revenue Code of 1986, in the case of taxable years beginning after December 31, 1984, and before January 1, 1989, a taxpayer shall be allowed the additional credit under section 3302(b) of such Code with respect to any employee covered by a qualified small business provision if the requirements of subparagraph (B) are met with respect to such employee.

“(B) REQUIREMENTS.—The requirements of this subparagraph are met for any taxable year with respect to any employee covered by a qualified small business provision if the amount of contributions required to be paid for the taxable year to the unemployment fund of the State with respect to such employee are not less than the product of the required rate multiplied by the wages paid by the employer during the taxable year.

“(C) REQUIRED RATE.—For purposes of subparagraph (B), the required rate for any taxable year is the sum of—

“(i) 3.1 percent, plus

“(ii) the applicable percentage (as defined in paragraph (3)(D)) of the excess of 5.4 percent over the rate described in clause (i).

“(D) QUALIFIED SMALL BUSINESS PROVISION.—For purposes of this paragraph, the term ‘qualified small business provision’ means a provision contained in a State unemployment compensation law (as in effect on the date of the enactment of this paragraph [Oct. 30, 1984]) which provides a maximum rate at which an employer is subject to contribution for wages paid during a calendar quarter if the total wages paid by such employer during such calendar quarter are less than \$50,000.

“(E) DEFINITION.—For purposes of this paragraph, the term ‘wages’ means the remuneration subject to contributions under the State unemployment compensation law, except that for purposes of subparagraph (D) the amount of total wages paid by an employer shall be determined without regard to any limitation on the amount subject to contribution.”

[Pub. L. 98-601, §1(b), Oct. 30, 1984, 98 Stat. 3148, provided that: “The amendment made by subsection (a) [amending section 271(d) of Pub. L. 97-248, set out above] shall apply to remuneration paid after December 31, 1984.”]

FINDINGS OF SECRETARY OF LABOR CONCERNING STEPS TAKEN BY STATES AS PREREQUISITE TO SUSPENSION UNTIL JANUARY 1, 1980, OF AUTOMATIC INCREASES IN FEDERAL UNEMPLOYMENT TAX

Pub. L. 95-19, title II, §201(b), Apr. 12, 1977, 91 Stat. 43, provided that extension under section 201(a) of Pub. L. 95-19 (amending this section) from Jan. 1, 1978, to Jan. 1, 1980, not to apply to any State unless the Secretary of Labor finds that such State meets the requirement of section 110(b) of Emergency Compensation and Special Unemployment Assistance Extension Act of 1975.

FISCAL SOUNDNESS OF STATE UNEMPLOYMENT ACCOUNT IN UNEMPLOYMENT TRUST FUND; UNPAID LOANS TO STATES; FINDINGS OF SECRETARY OF LABOR CONCERNING STEPS TAKEN BY STATES AS PREREQUISITE TO 1975-1977 SUSPENSION OF AUTOMATIC INCREASES IN FEDERAL UNEMPLOYMENT TAX

Pub. L. 94-45, title I, §110(b), June 30, 1975, 89 Stat. 239, provided that:

“(1) The amendment made by subsection (a) [amending this section] shall not be applicable in the case of any State unless the Secretary of Labor finds that such State has studied and taken appropriate action with respect to the financing of its unemployment programs so as substantially to accomplish the purpose of restoring the fiscal soundness of the State’s unemployment account in the Unemployment Trust Fund and permitting the repayment within a reasonable time of any advances made to such account under title XII of the Social Security Act [section 1321 et seq. of Title 42, The Public Health and Welfare]. For purposes of the pre-

ceding sentence, appropriate action with respect to the financing of a State’s unemployment programs means an increase in the State’s unemployment tax rate, an increase in the State’s unemployment tax base, a change in the experience rating formulas, or a combination thereof.

“(2) The Secretary of Labor shall promptly prescribe and publish in the Federal Register regulations setting forth the criteria according to which he will determine the requirements of the preceding paragraph.

“(3) Immediately after he makes a determination with respect to any State under paragraph (1), the Secretary of Labor shall publish such determination, together with his reasons therefor, in the Federal Register.”

§ 3303. Conditions of additional credit allowance

(a) State standards

A taxpayer shall be allowed an additional credit under section 3302(b) with respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor finds that under such law—

(1) no reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date;

(2) no reduced rate of contributions to a guaranteed employment account is permitted to a person (or a group of persons) having individuals in his (or their) employ unless—

(A) the guaranty of remuneration was fulfilled in the year preceding the computation date; and

(B) the balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3 years preceding the computation date by which contributions to such account were measured; and

(C) such contributions were payable to such account with respect to 3 years preceding the computation date;

(3) no reduced rate of contributions to a reserve account is permitted to a person (or group of persons) having individuals in his (or their) employ unless—

(A) compensation has been payable from such account throughout the year preceding the computation date, and

(B) the balance of such account amounts to not less than five times the largest amount of compensation paid from such account within any 1 of the 3 years preceding such date, and

(C) the balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3 years preceding such date by which contributions to such account were measured, and

(D) such contributions were payable to such account with respect to the 3 years preceding the computation date; and

(4) if the taxpayer is a certified professional employer organization (as defined in section