

§1(a)(4) [div. A, §213(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A-180, see above.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5130(a)(1) of Pub. L. 101-508 effective as if included in the enactment of Pub. L. 100-690, §7088, see section 5130(b) of Pub. L. 101-508, set out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-460 effective Oct. 9, 1984, and applicable with respect to violations occurring on or after such date, see section 16(d) of Pub. L. 98-460, set out as a note under section 405 of this title.

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-123, §4(c), Dec. 29, 1981, 95 Stat. 1664, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall be effective with respect to violations committed after the date of the enactment of this Act [Dec. 29, 1981]."

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92-603, title I, §130(b), Oct. 30, 1972, 86 Stat. 1360, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to information furnished to the Secretary after the date of the enactment of this Act [Oct. 30, 1972]."

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-778 effective in the manner provided in section 211(p), (q) of Pub. L. 86-778, section 211(s) of Pub. L. 86-778, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1939 AMENDMENT

Act Aug. 10, 1939, ch. 666, title II, §201, 53 Stat. 1362, provided that the amendment made by that section is effective Jan. 1, 1940.

**§ 409. "Wages" defined**

**(a) In general**

For the purposes of this subchapter, the term "wages" means remuneration paid prior to 1951 which was wages for the purposes of this subchapter under the law applicable to the payment of such remuneration, and remuneration paid after 1950 for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that, in the case of remuneration paid after 1950, such term shall not include—

(1)(A) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$3,600 with respect to employment has been paid to an individual during any calendar year prior to 1955, is paid to such individual during such calendar year;

(B) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this

section) equal to \$4,200 with respect to employment has been paid to an individual during any calendar year after 1954 and prior to 1959, is paid to such individual during such calendar year;

(C) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$4,800 with respect to employment has been paid to an individual during any calendar year after 1958 and prior to 1966, is paid to such individual during such calendar year;

(D) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$6,600 with respect to employment has been paid to an individual during any calendar year after 1965 and prior to 1968, is paid to such individual during such calendar year;

(E) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$7,800 with respect to employment has been paid to an individual during any calendar year after 1967 and prior to 1972, is paid to such individual during such calendar year;

(F) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$9,000 with respect to employment has been paid to an individual during any calendar year after 1971 and prior to 1973, is paid to such individual during any such calendar year;

(G) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$10,800 with respect to employment has been paid to an individual during any calendar year after 1972 and prior to 1974, is paid to such individual during such calendar year;

(H) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$13,200 with respect to employment has been paid to an individual during any calendar year after 1973 and prior to 1975, is paid to such individual during such calendar year;

(I) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to the contribution and benefit base (determined under section 430 of this title) with respect to employment has been paid to an individual during any calendar year after 1974 with respect to which such contribution and benefit base is effective, is paid to such individual during such calendar year;

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

their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of (A) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this clause shall exclude from the term "wages" only payments which are received under a workmen's compensation law), or (B) medical or hospitalization expenses in connection with sickness or accident disability, or (C) death, except that this subsection 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 under the Internal Revenue Code of 1986;

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

(4) Any payment made to, or on behalf of, an employee or his beneficiary (A) from or to a trust exempt from tax under section 165(a) of the Internal Revenue Code of 1939 at the time of such payment or, in the case of a payment after 1954, under sections 401 and 501(a) of the Internal Revenue Code of 1954 or the Internal Revenue Code of 1986, unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or (B) under or to an annuity plan which, at the time of such payment, meets the requirements of section 165(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1939 or, in the case of a payment after 1954 and prior to 1963, the requirements of section 401(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1954, or (C) under or to an annuity plan which, at the time of any such payment after 1962, is a plan described in section 403(a) of the Internal Revenue Code of 1986, or (D) under or to a bond purchase plan which, at the time of any such payment after 1962, is a qualified bond purchase plan described in section 405(a) of the Internal Revenue Code of 1954 (as in effect before July 18, 1984), or (E) under or to an annuity contract described in section 403(b) of the Internal Revenue Code of 1986, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise), or (F) under or to an exempt governmental deferred compensation plan (as defined in section 3121(v)(3) of such Code), or (G) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this subsection to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(2)(B)(ii)], or (H) under a simplified employee pension (as defined in section 408(k)(1) of such Code), other

than any contributions described in section 408(k)(6) of such Code, or (I) under a cafeteria plan (within the meaning of section 125 of the Internal Revenue Code of 1986) if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received; or (J) under an arrangement to which section 408(p) of such Code applies, other than any elective contributions under paragraph (2)(A)(i) thereof; or (K) under a plan described in section 457(e)(11)(A)(ii) of the Internal Revenue Code of 1986 and maintained by an eligible employer (as defined in section 457(e)(1) of such Code);

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

(A) of the tax imposed upon an employee under section 3101 of the Internal Revenue Code of 1986, or

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

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

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

(B) Cash remuneration paid by an employer in any calendar year to an employee for domestic service in a private home of the employer (including domestic service on a farm operated for profit), if the cash remuneration paid in such year by the employer to the employee for such service is less than the applicable dollar threshold (as defined in section 3121(x) of the Internal Revenue Code of 1986) for such year;

(C) Cash remuneration paid by an employer in any calendar year to an employee for service not in the course of the employer's trade or business, if the cash remuneration paid in such year by the employer to the employee for such service is less than \$100. As used in this paragraph, the term "service not in the course of the employer's trade or business" does not include domestic service in a private home of the employer and does not include service described in section 410(f)(5) of this title;

(7)(A) Remuneration paid in any medium other than cash for agricultural labor;

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

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

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

except that clause (ii) shall not apply in determining whether remuneration paid to an employee constitutes "wages" under this section if such employee (I) is employed as a hand harvest laborer and is paid on a piece rate basis in

an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (II) commutes daily from his permanent residence to the farm on which he is so employed, and (III) has been employed in agriculture less than 13 weeks during the preceding calendar year;

(8) Remuneration paid by an employer in any year to an employee for service described in section 410(j)(3)(C) of this title (relating to home workers), if the cash remuneration paid in such year by the employer to the employee for such service is less than \$100;

(9) Remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 of the Internal Revenue Code of 1986 (determined without regard to section 274(n) of such Code);

(10)(A) Tips paid in any medium other than cash;

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

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

(A) upon or after the termination of an employee's employment relationship because of (A)<sup>1</sup> death, or (B)<sup>1</sup> retirement for disability, and

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

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

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

(13) Any payment made by an employer to an employee, if at the time such payment is made such employee is entitled to disability insurance benefits under section 423(a) of this title and such entitlement commenced prior to the calendar year in which such payment is made, and if such employee did not perform any services for such employer during the period for which such payment is made;

(14) Remuneration paid by an organization exempt from income tax under section 501 of the Internal Revenue Code of 1986 in any calendar year to an employee for service rendered in the employ of such organization, if the remuneration paid in such year by the organization to the employee for such service is less than \$100;

(15) 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 or 129 of the Internal Revenue Code of 1986;

(16) The value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119 of the Internal Revenue Code of 1986;

(17) 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 of the Internal Revenue Code of 1986;

(18) Remuneration consisting of income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercise of fishing rights);

(19) 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) of the Internal Revenue Code of 1986) or under an employee stock purchase plan (as defined in section 423(b) of such Code), or

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

(20) Any benefit or payment which is excludable from the gross income of the employee under section 139B(b) of the Internal Revenue Code of 1986.<sup>2</sup>

#### **(b) Regulations providing exclusions from term**

Nothing in the regulations prescribed for purposes of chapter 24 of the Internal Revenue Code of 1986 (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this subchapter.

#### **(c) Individuals performing domestic services**

For purposes of this subchapter, in the case of domestic service described in subsection (a)(6)(B), any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under such conditions and to such extent as may be prescribed by regulations made under this subchapter, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to \$1. The amount of any payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of subsection (a)(6)(B).

#### **(d) Members of uniformed services**

For purposes of this subchapter, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of section 410(l)(1) of this title are applicable, the term "wages" shall, subject to the provisions of

<sup>1</sup>So in original. Probably should be designated cls. (i) and (ii), respectively.

<sup>2</sup>So in original. The closing parenthesis probably should not appear.

subsection (a)(1) of this section, include as such individual's remuneration for such service only (1) his basic pay as described in chapter 3 and section 1009 of title 37 in the case of an individual performing service to which subparagraph (A) of such section 410(l)(1) of this title applies, or (2) his compensation for such service as determined under section 206(a) of title 37 in the case of an individual performing service to which subparagraph (B) of such section 410(l)(1) of this title applies.

**(e) Peace Corps volunteers**

For purposes of this subchapter, in the case of an individual performing service, as a volunteer or volunteer leader within the meaning of the Peace Corps Act [22 U.S.C. 2501 et seq.], to which the provisions of section 410(o) of this title are applicable, (1) the term "wages" shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service only amounts certified as payable pursuant to section 5(c) or 6(1) of the Peace Corps Act [22 U.S.C. 2504(c) or 2505(1)], and (2) any such amount shall be deemed to have been paid to such individual at the time the service, with respect to which it is paid, is performed.

**(f) Tips**

For purposes of this subchapter, tips received by an employee in the course of his employment shall be considered remuneration for employment. Such remuneration shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code of 1986 or (if no statement including such tips is so furnished) at the time received.

**(g) Members of religious orders**

For purposes of this subchapter, in any case where an individual is a member of a religious order (as defined in section 3121(r)(2) of the Internal Revenue Code of 1986) performing service in the exercise of duties required by such order, and an election of coverage under section 3121(r) of such Code is in effect with respect to such order or with respect to the autonomous subdivision thereof to which such member belongs, the term "wages" shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service the fair market value of any board, lodging, clothing, and other perquisites furnished to such member by such order or subdivision thereof or by any other person or organization pursuant to an agreement with such order or subdivision, except that the amount included as such individual's remuneration under this paragraph shall not be less than \$100 a month.

**(h) Retired justices and judges**

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

**(i) Employer contributions under sections 401(k) and 414(h)(2) of Internal Revenue Code**

Nothing in any of the foregoing provisions of this section (other than subsection (a)) shall exclude from the term "wages"—

(1) Any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986) to the extent not included in gross income by reason of section 402(a)(8) of such Code, or

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

**(j) Amounts deferred under nonqualified deferred compensation plans**

Any amount deferred under a nonqualified deferred compensation plan (within the meaning of section 3121(v)(2)(C) of the Internal Revenue Code of 1986) shall be taken into account for purposes of this subchapter as of the later of when the services are performed, or when there is no substantial risk of forfeiture of the rights to such amount. Any amount taken into account as wages by reason of the preceding sentence (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this subchapter.

**(k) "National average wage index" and "deferred compensation amount" defined**

(1) For purposes of sections 403(f)(8)(B)(ii), 413(d)(2)(B), 415(a)(1)(B)(ii), 415(a)(1)(C)(ii), 415(a)(1)(D), 415(b)(3)(A)(ii), 415(i)(1)(E), 415(i)(2)(C)(ii), 424a(f)(2)(B), and 430(b)(2) (and 430(b)(2) of this title as in effect immediately prior to the enactment of the Social Security Amendments of 1977), the term 'national average wage index' for any particular calendar year means, subject to regulations of the Commissioner of Social Security under paragraph (2), the average of the total wages for such particular calendar year.

(2) The Commissioner of Social Security shall prescribe regulations under which the national average wage index for any calendar year shall be computed—

(A) on the basis of amounts reported to the Secretary of the Treasury or his delegate for such year,

(B) by disregarding the limitation on wages specified in subsection (a)(1),

(C) with respect to calendar years after 1990, by incorporating deferred compensation amounts and factoring in for such years the rate of change from year to year in such amounts, in a manner consistent with the requirements of section 10208 of the Omnibus Budget Reconciliation Act of 1989, and

(D) with respect to calendar years before 1978, in a manner consistent with the manner in which the average of the total wages for each of such calendar years was determined as provided by applicable law as in effect for such years.

(3) For purposes of this subsection, the term "deferred compensation amount" means—

(A) any amount excluded from gross income under chapter 1 of the Internal Revenue Code of 1986 by reason of section 402(a)(8),<sup>3</sup> 402(h)(1)(B), or 457(a) of such Code or by reason of a salary reduction agreement under section 403(b) of such Code,

(B) any amount with respect to which a deduction is allowable under chapter 1 of such Code by reason of a contribution to a plan described in section 501(c)(18) of such Code, and

(C) to the extent provided in regulations of the Commissioner of Social Security, deferred compensation provided under any arrangement, agreement, or plan referred to in subsection (i) or (j).

(Aug. 14, 1935, ch. 531, title II, §209, 49 Stat. 625; Aug. 10, 1939, ch. 666, title II, §201, 53 Stat. 1362, 1373; Mar. 24, 1943, ch. 26, §1(b)(2), 57 Stat. 47; Apr. 4, 1944, ch. 161, §2, 58 Stat. 188; Oct. 23, 1945, ch. 433, §7(b), 59 Stat. 548; Dec. 29, 1945, ch. 652, title I, §5(a), 59 Stat. 671; Aug. 10, 1946, ch. 951, title IV, §§407(a), 408(a), 409(a), 410, 411, 414, 60 Stat. 988, 989, 990; Apr. 20, 1948, ch. 222, §1(a), 62 Stat. 195; Aug. 28, 1950, ch. 809, title I, §104(a), 64 Stat. 492; Sept. 1, 1954, ch. 1206, title I, §§101(a)(1)–(3), 104(a), 68 Stat. 1052, 1078; Aug. 1, 1956, ch. 836, title I, §105(a), 70 Stat. 828; Aug. 1, 1956, ch. 837, title IV, §401, 70 Stat. 869; Pub. L. 85–786, §1, Aug. 27, 1958, 72 Stat. 938; Pub. L. 85–840, title I, §102(a), Aug. 28, 1958, 72 Stat. 1019; Pub. L. 86–778, title I, §103(j)(2)(C), (F), Sept. 13, 1960, 74 Stat. 937, 938; Pub. L. 87–64, title I, §102(c)(3)(A), June 30, 1961, 75 Stat. 134; Pub. L. 87–293, title II, §202(b)(2), Sept. 22, 1961, 75 Stat. 626; Pub. L. 88–272, title II, §220(c)(3), Feb. 26, 1964, 78 Stat. 63; Pub. L. 88–650, §4(a), Oct. 13, 1964, 78 Stat. 1077; Pub. L. 89–97, title III, §§313(a), 320(a)(1), July 30, 1965, 79 Stat. 382, 393; Pub. L. 90–248, title I, §108(a)(1), title V, §504(c), Jan. 2, 1968, 81 Stat. 834, 935; Pub. L. 92–5, title II, §203(a)(1), Mar. 17, 1971, 85 Stat. 10; Pub. L. 92–336, title II, §203(a)(1), July 1, 1972, 86 Stat. 417; Pub. L. 92–603, title I, §§104(g), 122(a), 123(c)(1), 138(a), Oct. 30, 1972, 86 Stat. 1341, 1354, 1356, 1365; Pub. L. 93–66, title II, §203(a)(1), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, §5(a)(1), Dec. 31, 1973, 87 Stat. 953; Pub. L. 95–216, title III, §351(a)(1)–(3)(A), Dec. 20, 1977, 91 Stat. 1549; Pub. L. 95–472, §3(c), Oct. 17, 1978, 92 Stat. 1333; Pub. L. 95–600, title I, §164(b)(4), Nov. 6, 1978, 92 Stat. 2814; Pub. L. 96–499, title XI, §1141(a)(2), Dec. 5, 1980, 94 Stat. 2693; Pub. L. 97–34, title I, §124(e)(2)(B), Aug. 13, 1981, 95 Stat. 201; Pub. L. 97–123, §3(a), Dec. 29, 1981, 95 Stat. 1662; Pub. L. 98–21, title I, §101(c)(1), title III, §§324(c)(1)–(3), 327(a)(2), (b)(2), 328(b), Apr. 20, 1983, 97 Stat. 70, 124, 125, 127, 128; Pub. L. 98–369, div. A, title IV, §491(d)(39), title V, §531(d)(1)(B), div. B, title VI, §§2661(i), 2663(a)(6), July 18, 1984, 98 Stat. 851, 884, 1157, 1162; Pub. L. 99–272, title XII, §12112(a), Apr. 7, 1986, 100 Stat. 288; Pub. L. 99–514, title I, §122(e)(5), title XI, §1151(d)(2)(C), Oct. 22, 1986, 100 Stat. 2112, 2505; Pub. L. 100–203, title IX, §§9001(a)(2), 9002(a), 9003(a)(1), Dec. 22, 1987, 101 Stat. 1330–286, 1330–287; Pub. L. 100–647, title I, §§1001(g)(4)(C), 1011(f)(8), 1011B(a)(22)(E), (23)(B), title III, §3043(a), title VIII, §8017(a), Nov. 10, 1988, 102 Stat. 3352, 3463, 3486, 3641, 3793; Pub. L.

101–140, title II, §203(a)(2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title X, §10208(a), (d)(1), Dec. 19, 1989, 103 Stat. 2476, 2479; Pub. L. 101–508, title V, §5130(a)(5), Nov. 5, 1990, 104 Stat. 1388–289; Pub. L. 103–296, title I, §107(a)(4), title III, §321(c)(4), (e)(1), Aug. 15, 1994, 108 Stat. 1478, 1538, 1539; Pub. L. 103–387, §2(a)(2)(A), Oct. 22, 1994, 108 Stat. 4072; Pub. L. 104–188, title I, §§1421(b)(8)(B), 1458(b)(2), Aug. 20, 1996, 110 Stat. 1798, 1820; Pub. L. 108–203, title IV, §423(b), Mar. 2, 2004, 118 Stat. 536; Pub. L. 108–357, title II, §251(a)(1)(B), title III, §320(b)(5), Oct. 22, 2004, 118 Stat. 1458, 1473; Pub. L. 110–245, title I, §115(a)(2), June 17, 2008, 122 Stat. 1636; Pub. L. 113–295, div. A, title II, §221(a)(19)(B)(viii), Dec. 19, 2014, 128 Stat. 4040.)

## Editorial Notes

### REFERENCES IN TEXT

Section 165 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4)(A), (B), was a part of chapter 1 of the 1939 Code, and was repealed by section 7851(a)(1)(A), (3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). Internal Revenue Code of 1954 redesignated Internal Revenue Code of 1986 by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.

Section 405(a) of the Internal Revenue Code of 1954, referred to in subsec. (a)(4)(D), was repealed by Pub. L. 98–369, div. A, title IV, §491(a), July 18, 1984, 98 Stat. 848.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Internal Revenue Code of 1954, referred to in text, redesignated Internal Revenue Code of 1986 by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.

Internal Revenue Code of 1986, referred to in text, is classified to Title 26.

The Peace Corps Act, referred to in subsec. (e), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

The enactment of the Social Security Amendments of 1977, referred to in subsec. (k)(1), means the enactment of Pub. L. 95–216, which was approved Dec. 20, 1977.

Section 10208 of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (k)(2)(C), is section 10208 of Pub. L. 101–239, title X, Dec. 19, 1989, 103 Stat. 2476, which amended this section, sections 403, 413, 415, 417, 418, 424a, and 430 of this title, section 206 of Title 29, Labor, and section 231 of Title 45, Railroads, and enacted provisions set out as a note under section 430 of this title.

Section 402 of the Internal Revenue Code of 1986, referred to in subsec. (k)(3)(A), was amended by Pub. L. 102–318, §521, and, as so amended, provisions formerly contained in section 402(a)(8) are contained in section 402(e)(3).

### AMENDMENTS

2014—Subsec. (a)(14). Pub. L. 113–295 struck out subpar. (A) designation before “Remuneration paid by” and struck out subpar. (B) which read as follows: “Any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 of the Internal Revenue Code of 1986 (relating to amounts received under qualified group legal services plans);”.

2008—Subsec. (a)(20). Pub. L. 110–245 added par. (20).

2004—Subsec. (a)(6)(B). Pub. L. 108–203 substituted “on a farm operated for profit” for “described in section 410(f)(5) of this title”.

<sup>3</sup> See References in Text note below.

Subsec. (a)(17). Pub. L. 108-357, §320(b)(5), inserted "108(f)(4)," after "74(c)."

Subsec. (a)(19). Pub. L. 108-357, §251(a)(1)(B), added par. (19).

1996—Subsec. (a)(4)(J). Pub. L. 104-188, §1421(b)(8)(B), added subpar. (J).

Subsec. (a)(4)(K). Pub. L. 104-188, §1458(b)(2), added subpar. (K).

1994—Subsec. (a)(4)(A). Pub. L. 103-296, §321(c)(4)(A), substituted "Internal Revenue Code of 1954 or the Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (a)(4)(C), (E), (5)(A). Pub. L. 103-296, §321(c)(4)(B)(i), (ii), substituted "1986" for "1954" after "Code of".

Subsec. (a)(6)(B). Pub. L. 103-387 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "Cash remuneration paid by an employer in any calendar quarter to an employee for domestic service in a private home of the employer, if the cash remuneration paid in such quarter by the employer to the employee for such service is less than \$50. As used in this paragraph, the term 'domestic service in a private home of the employer' does not include service described in section 410(f)(5) of this title;"

Subsecs. (a)(14)(A), (B), (15) to (17), (b), (f), (g), (i)(1), (j). Pub. L. 103-296, §321(c)(4)(B)(iii)-(vi), (C), substituted "1986" for "1954" after "Code of".

Subsec. (k). Pub. L. 103-296, §321(e)(1), added par. (1) and struck out former par. (1) which defined "deemed average total wages", added par. (2), and redesignated former par. (2) as (3) and in introductory provisions of par. (3) substituted "this subsection" for "paragraph (1)".

Pub. L. 103-296, §107(a)(4), in subsec. (k) as amended by Pub. L. 103-296, §321(e)(1), substituted "Commissioner of Social Security" for "Secretary" in par. (1), in introductory provisions of par. (2), and in par. (3)(C).

1990—Subsec. (a)(7)(B). Pub. L. 101-508 substituted "clause (ii)" for "subparagraph (B)" in concluding provisions.

1989—Subsec. (a). Pub. L. 101-239, §10208(d)(1)(A)-(K), inserted "(a)" at beginning of text and in subsec. (a) as so designated, redesignated, respectively, former subsec. (a)(1) to (9) as par. (1)(A) to (I), former subsec. (b)(1) to (3) as par. (2)(A) to (C), former subsec. (d) as par. (3), former subsec. (e)(1) to (9) as par. (4)(A) to (I), former subsec. (f)(1) and (2) as par. (5)(A) and (B), former subsec. (g)(1) to (3) as par. (6)(A) to (C), former subsec. (h)(1), (2)(A) and (B), and (i) to (iii) as par. (7)(A), (B)(i) and (ii), and (I) to (III), former subsecs. (j) and (k) as pars. (8) and (9), former subsec. (l)(1) and (2) as par. (10)(A) and (B), former subsec. (m)(1) and (2) as par. (11)(A) and (B), former subsecs. (n) and (o) as pars. (12) and (13), former subsec. (p)(1) and (2) as par. (14)(A) and (B), and former subsecs. (q) to (t) as pars. (15) to (18).

Subsec. (b). Pub. L. 101-239, §10208(d)(1)(L), designated par. beginning with "Nothing in the regulations" as subsec. (b). Former subsec. (b) redesignated subsec. (a)(2).

Subsec. (c). Pub. L. 101-239, §10208(d)(1)(M), designated par. beginning with "For purposes of this subchapter, in the case of domestic service" as subsec. (c) and substituted "subsection (a)(6)(B)" for "subsection (g)(2)" in two places.

Subsec. (d). Pub. L. 101-239, §10208(d)(1)(N), designated par. beginning with "For purposes of this subchapter, in the case of an individual performing service, as a member" as subsec. (d) and substituted "subsection (a)(1)" for "subsection (a)" in introductory provisions. Former subsec. (d) redesignated subsec. (a)(3).

Subsecs. (e) to (h). Pub. L. 101-239, §10208(d)(1)(O)-(R), designated pars. beginning with "For purposes of this subchapter, in the case of an individual performing service, as a volunteer", "For purposes of this subchapter, tips received", "For purposes of this subchapter, in any case where", and "For purposes of this subchapter, in the case of an individual performing service under the provisions", as subsecs. (e) to (h), respectively. Former subsecs. (e) to (h) redesignated subsec. (a)(4) to (7), respectively.

Subsec. (i). Pub. L. 101-239, §10208(d)(1)(S), designated par. beginning with "Nothing in any of the foregoing" as subsec. (i).

Pub. L. 101-140 amended cls. (2) and (3) of next to last indented par. of closing provisions [now subsec. (i)] to read as if amendment by Pub. L. 100-647, §1011B(a)(22)(E), had not been enacted, see 1988 Amendment note below.

Subsec. (j). Pub. L. 101-239, §10208(d)(1)(T), designated par. beginning with "Any amount deferred" as subsec. (j). Former subsec. (j) redesignated subsec. (a)(8).

Subsec. (k). Pub. L. 101-239, §10208(a), added subsec. (k).

1988—Pub. L. 100-647, §1011B(a)(22)(E), in next to last indented par. of closing provisions, substituted "or" for period at end of cl. (2) and added cl. (3).

Subsec. (e)(8). Pub. L. 100-647, §1011(f)(8), amended cl. (8) generally. Prior to amendment, cl. (8) read as follows: "under a simplified employee pension (as defined in section 408(k) of the Internal Revenue Code of 1986) if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2) of such Code for such payment."

Subsec. (e)(9). Pub. L. 100-647, §1011B(a)(23)(B), inserted "if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received" after "1986".

Subsec. (h)(2). Pub. L. 100-647, §8017(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless (A) the cash remuneration paid in such year by the employer to the employee for such labor is \$150 or more, or (B) the employer's expenditures for agricultural labor in such year equal or exceed \$2,500;"

Subsec. (k). Pub. L. 100-647, §1001(g)(4)(C), substituted "section 217 of the Internal Revenue Code of 1986 (determined without regard to section 274(n) of such Code)" for "section 217 of the Internal Revenue Code of 1954".

Subsec. (t). Pub. L. 100-647, §3043(a), added subsec. (t).

1987—Pub. L. 100-203, §9001(a)(2), in second indented par. of closing provisions, substituted "only (1) his basic pay as described in chapter 3 and section 1009 of title 37 in the case of an individual performing service to which subparagraph (A) of such section 410(l)(1) of this title applies, or (2) his compensation for such service as determined under section 206(a) of title 37 in the case of an individual performing service to which subparagraph (B) of such section 410(l)(1) of this title applies." for "only his basic pay as described in chapter 3 and section 1009 of title 37."

Subsec. (b)(3). Pub. L. 100-203, §9003(a)(1), substituted "death, except that this subsection 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 under the Internal Revenue Code of 1986" for "death".

Subsec. (h)(2)(B). Pub. L. 100-203, §9002(a), added cl. (B) and struck out former cl. (B) which read as follows: "the employee performs agricultural labor for the employer on twenty days or more during such year for cash remuneration computed on a time basis;"

1986—Subsec. (e). Pub. L. 99-514, §1151(d)(2)(C), added cl. (9).

Subsec. (s). Pub. L. 99-514, §122(e)(5), substituted "74(c), 117, or" for "117 or".

Pub. L. 99-272 in third to last undesignated paragraph, substituted "shall not include" for "shall, subject to the provisions of subsection (a) of this section, include".

1984—Pub. L. 98-369, §531(d)(1)(B)(i), inserted in introductory text "(including benefits)" before "paid in any medium".

Subsec. (a)(5) to (9). Pub. L. 98-369, §2663(a)(6)(A)(i), realigned margins of pars. (5) to (9).

Subsec. (e). Pub. L. 98-369, §2663(a)(6)(A)(v), realigned margin of subsec. (e).

Subsec. (e)(4). Pub. L. 98-369, §491(d)(39), inserted "(as in effect before July 18, 1984)" after "section 405(a) of the Internal Revenue Code of 1954".

Subsec. (e)(7). Pub. L. 98-369, §2661(i)(1), struck out the semicolon after “Act of 1974”.

Subsecs. (f), (k) to (p). Pub. L. 98-369, §2663(a)(6)(A)(v), realigned margins of subsecs. (f) and (k) to (p).

Subsec. (p). Pub. L. 98-369, §2663(a)(6)(A)(ii)-(iv), redesignated the subsec. (p) enacted by Pub. L. 95-216 as par. (1) and the subsec. (p) enacted by Pub. L. 95-472 as par. (2), and substituted a semicolon for a period in par. (1) as so redesignated.

Subsecs. (q), (r). Pub. L. 98-369, §2663(a)(6)(A)(v), realigned margins of subsecs. (q) and (r).

Subsec. (s). Pub. L. 98-369, §531(d)(1)(B)(ii), added subsec. (s).

Pub. L. 98-369, §2663(a)(6)(B), in undesignated par. relating to the meaning of “wages” in the case of a member of a uniformed service to which section 410(l)(1) of this title is applicable, substituted “chapter 3 and section 1009 of title 37” for “section 102(10) of the Servicemen’s and Veterans’ Survivor Benefits Act”.

Pub. L. 98-369, §2661(i)(2), in undesignated par. relating to employer contributions as not being excluded from “wages”, inserted “where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise)”.

1983—Subsec. (b). Pub. L. 98-21, §324(c)(3)(A), struck out cl. (1) which read “retirement”, and redesignated cls. (2) to (4) as (1) to (3), respectively.

Subsec. (c). Pub. L. 98-21, §324(c)(3)(B), struck out subsec. (c) which related to any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement.

Subsec. (e)(5) to (7). Pub. L. 98-21, §324(c)(2), added cls. (5) to (7).

Subsec. (e)(8). Pub. L. 98-21, §328(b), added cl. (8).

Subsec. (i). Pub. L. 98-21, §324(c)(3)(B), struck out subsec. (i) which related to any payment (other than vacation or sick pay) made to an employee after the month in which he attained age 62, if he did not work for the employer in the period for which such payment was made, and provided for this subsection that “sick pay” included remuneration for service in the employ of a State, a political subdivision (as defined in section 418(b)(2) of this title) of a State, or an instrumentality of two or more States, paid to an employee thereof for a period during which he was absent from work because of sickness.

Subsec. (m)(1)(C). Pub. L. 98-21, §324(c)(3)(C), struck out subpar. (C) which related to retirement after attaining an age specified in the plan referred to in par. (2) or in a pension plan of the employer.

Subsec. (r). Pub. L. 98-21, §327(a)(2), added subsec. (r).

Pub. L. 98-21, §327(b)(2), inserted, immediately following subsec. (r), provision that nothing in the regulations prescribed for purposes of chapter 24 of the Internal Revenue Code of 1954 (relating to income tax withholding) which provides an exclusion from “wages” as used in such chapter shall be construed to require a similar exclusion from “wages” in the regulations prescribed for purposes of this subchapter.

Pub. L. 98-21, §324(c)(1), inserted, at end of section, two undesignated pars. specifying the inclusion of certain employer contributions as “wages” and directing that any amount deferred under a nonqualified deferred compensation plan be taken into account under certain conditions but not treated as wages thereafter for purposes of this subchapter.

Pub. L. 98-21, §101(c)(1), inserted, at end of section, undesignated par. defining “wages” for purposes of this subchapter in the case of an individual performing service under provisions of section 294 of title 28 (relating to assignment of retired justices and judges to active duty) to include payments under section 371(b) of title 28 that is received during the period of such service.

1981—Subsec. (b)(2). Pub. L. 97-123 inserted “(but, in the case of payments made to an employee or any of his dependents, this clause shall exclude from the term ‘wages’ only payments which are received under a

workmen’s compensation law)” after “sickness or accident disability”.

Subsec. (q). Pub. L. 97-34 substituted “section 127 or 129” for “section 127”.

1980—Subsec. (f). Pub. L. 96-499 substituted “section 3101 of the Internal Revenue Code of 1954” for “section 1400 of the Internal Revenue Code of 1939” in subpar. (1) and inserted “with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor”.

1978—Subsec. (p). Pub. L. 95-472 added a second subsec. (p).

Subsec. (q). Pub. L. 95-600 added subsec. (q).

1977—Subsecs. (g)(3), (j). Pub. L. 95-216, §351(a)(1), (2), substituted “year” for “quarter” wherever appearing and “\$100” for “\$50”.

Subsec. (n). Pub. L. 95-216, §351(a)(3)(A), struck out “or” after “such employee died”.

Subsec. (o). Pub. L. 95-216, §351(a)(3)(A), substituted “payment is made; or” for “payment is made.”

Subsec. (p). Pub. L. 95-216, §351(a)(3)(A), added subsec. (p).

1973—Subsec. (a)(8). Pub. L. 93-233 substituted “\$13,200” for “\$12,600”.

Pub. L. 93-66 substituted “\$12,600” for “\$12,000”.

1972—Subsec. (a)(6). Pub. L. 92-336, §203(a)(1)(A), inserted “and prior to 1973” after “1971”.

Subsec. (a)(7) to (9). Pub. L. 92-336, §203(a)(1)(B), added pars. (7) to (9).

Subsec. (i). Pub. L. 92-603, §104(g), struck out “(if a woman) and age 65 (if a man)” after “attains age 62”.

Subsec. (n). Pub. L. 92-603, §122(a), added subsec. (n).

Subsec. (o). Pub. L. 92-603, §138(a), added subsec. (o).

Pub. L. 92-603, §123(c)(1), added par. at end defining “wages” in the case of members of a religious order when an election under section 3121(r) of the Internal Revenue Code of 1954 is in effect.

1971—Subsec. (a)(5). Pub. L. 92-5, §203(a)(1)(A), inserted “and prior to 1972” after “1967”.

Subsec. (a)(6). Pub. L. 92-5, §203(a)(i)(B), added par. (6).

1968—Subsec. (a)(4), (5). Pub. L. 90-248, §108(a)(1)(A), (B), inserted “and prior to 1968” after “1965” and added par. (5), respectively.

Subsec. (m). Pub. L. 90-248, §504(c), added subsec. (m).

1965—Subsec. (a)(3). Pub. L. 89-97, §320(a)(1)(A), inserted “and prior to 1966” after “1958”.

Subsec. (a)(4). Pub. L. 89-97, §320(a)(1)(B), added par. (4).

Subsec. (l). Pub. L. 89-97, §313(a)(1), added subsec. (l).

Pub. L. 89-97, §313(a)(2), added paragraph at end providing that tips be considered remuneration and that such remuneration be deemed paid as of the filing of a written statement or as of the time received.

1964—Subsec. (e). Pub. L. 88-272 included as “wages” payments after 1954 under or to trust exempt under sections 401 and 501(a), I.R.C. 1954, under annuity plans after 1954 and prior to 1963, under section 401(a)(3), (4), (5), and (6), I.R.C. 1954, under or to annuity plans which at time of payment after 1962, are described in section 403(a), I.R.C. 1954, and under or to a bond purchase plan which at time of any payment after 1962, is a qualified bond purchase plan described in section 405(a), I.R.C. 1954.

Subsec. (k). Pub. L. 88-650 added subsec. (k).

1961—Subsec. (i). Pub. L. 87-64 substituted “attains age 62 (if a woman) or age 65 (if a man)” for “attains retirement age (as defined in section 416(a) of this title)”.

Pub. L. 87-293 added last paragraph providing for computation of wages for Peace Corps volunteer service.

1960—Subsec. (j). Pub. L. 86-778, §103(j)(2)(F), substituted “section 410(j)(3)(C)” for “section 410(k)(3)(C)”.

Pub. L. 86-778, §103(j)(2)(C), substituted “section 410(l)(1) of this title” for “section 410(m)(1) of this title” in last par.

1958—Subsec. (a). Pub. L. 85-840 inserted “and prior to 1959” after “any calendar year after 1954” in cl. (2), and added cl. (3).

Subsec. (i). Pub. L. 85-786 inserted sentence to include remuneration for service in State employment paid to employee for period he was absent for illness in term "sick pay".

1956—Subsec. (h)(2). Act Aug. 1, 1956, ch. 836, included within definition of "wages" cash remuneration of \$150 or more, and cash remuneration computed on a time basis where the employee performs agricultural labor for the employer on 20 days or more during the calendar year.

Act Aug. 1, 1956, ch. 837, added penultimate par. to define "wages" in the case of an individual performing service, as a member of a uniformed service, to which the provisions of section 410(m)(1) of this title are applicable.

1954—Subsec. (a). Act Sept. 1, 1954, §104(a), provided that for years after 1954 "wages" would exclude any remuneration in excess of \$4,200 paid to an individual with respect to employment during a calendar year.

Subsec. (g)(2). Act Sept. 1, 1954, §101(a)(1), made coverage of domestic service depend solely on receipt by the employee, in a quarter, of \$50 in cash remuneration from one employer for such service.

Subsec. (g)(3). Act Sept. 1, 1954, §101(a)(2), added par. (3).

Subsec. (h). Act Sept. 1, 1954, §101(a)(3), redesignated subsection as cl. (1) and added cl. (2).

1950—Act Aug. 28, 1950, amended section generally.

1948—Subsec. (b)(15). Act Apr. 20, 1948, inserted subpar. (B).

1946—Subsec. (a). Act Aug. 10, 1946, §414, in amending subsec. (a), made pars. (1) and (2) applicable only to payments before Jan. 1, 1947, added a new par. (3), applicable to payments after that date, and renumbered former pars. (3) to (6) to be pars. (4) to (7), respectively.

Subsec. (h). Act Aug. 10, 1946, §407(a), in amending subsec. (h), required a currently insured individual to have not less than six quarters of coverage during the period consisting of the quarter in which he died and the twelve preceding quarters.

Subsec. (i). Act Aug. 10, 1946, §408(a), in amending subsec. (i), required only that a wife be married to the insured individual for 36 months instead of requiring that they be married before Jan. 1, 1939, or before he became 60 years of age, as was formerly the case.

Subsec. (k). Act Aug. 10, 1946, §409(a), in amending subsec. (k), changed requirement that a stepchild or adopted child must have been such before the individual reached age 60 to require, in the case of a living individual, that the child must have been a stepchild or adopted child for 36 months.

Subsec. (q). Act Aug. 10, 1946, §410, added subsec. (q).

Subsec. (r). Act Aug. 10, 1946, §411, added subsec. (r).

1945—Subsec. (b)(16). Act. Dec. 29, 1945, added par. (16).

Subsec. (p). Act Oct. 23, 1945, added subsec. (p).

1944—Subsec. (o)(1). Act Apr. 4, 1944, §2, inserted "but shall not include any such service performed (1) under a contract entered into without the United States and during the performance of which the vessel does not touch at a port in the United States, or (2) on a vessel documented under the laws of any foreign country and bareboat chartered to the War Shipping Administration".

1943—Subsec. (o). Act Mar. 24, 1943, added subsec. (o).

1939—Act Aug. 10, 1939, amended section generally.

#### 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 Title 26, Internal Revenue Code.

##### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-245 effective as if included in section 5 of Pub. L. 110-142, see section 115(d) of Pub. L. 110-245, set out as a note under section 3121 of Title 26, Internal Revenue Code.

##### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 251(a)(1)(B) 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 Title 26, Internal Revenue Code.

Amendment by section 320(b)(5) 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 Title 26, Internal Revenue Code.

##### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(b)(8)(B) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104-188, set out as a note under section 72 of Title 26, Internal Revenue Code.

Amendment by section 1458(b)(2) of Pub. L. 104-188 applicable to remuneration paid after Dec. 31, 1996, see section 1458(c)(2) of Pub. L. 104-188, set out as a note under section 3121 of Title 26.

##### EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103-387 applicable to remuneration paid after Dec. 31, 1993, see section 2(a)(3) of Pub. L. 103-387, set out as a note under section 3102 of Title 26, Internal Revenue Code.

Amendment by section 107(a)(4) of Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of this title.

##### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective as if included in the enactment of Pub. L. 101-239, §10208, see section 5130(b) of Pub. L. 101-508, set out as a note under section 1402 of Title 26, Internal Revenue Code.

##### EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 10208(a) of Pub. L. 101-239 applicable with respect to computation of average total wage amounts (under amended provisions) for calendar years after 1990, see section 10208(c) of Pub. L. 101-239, set out as a note under section 430 of this title.

Amendment by Pub. L. 101-140 effective as if included in section 1151 of Pub. L. 99-514, see section 203(c) of Pub. L. 101-140, set out as a note under section 79 of Title 26, Internal Revenue Code.

##### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1001(g)(4)(C), 1011(f)(8), and 1011B(a)(23)(B) 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 Title 26, Internal Revenue Code.

Amendment by section 1011B(a)(22)(E) 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 Title 26.

Amendment by section 3043(a) of Pub. L. 100-647 applicable to all periods beginning before, on, or after Nov. 10, 1988, with no inference created as to existence or non-existence or scope of any exemption from tax for income derived from fishing rights secured as of Mar. 17, 1988, by any treaty, law, or Executive Order, see section 3044 of Pub. L. 100-647, set out as an Effective Date note under section 7873 of Title 26.

Amendment by section 8017(a) of Pub. L. 100-647 effective as if included in amendments made by section 9002 of Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, see section 8017(c) of Pub. L. 100-647, set out as a note under section 3121 of Title 26.

##### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9001(a)(2) of Pub. L. 100-203 applicable with respect to remuneration paid after Dec.

31, 1987, see section 9001(d) of Pub. L. 100-203, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 9002(a) of Pub. L. 100-203 applicable with respect to remuneration for agricultural labor paid after Dec. 31, 1987, see section 9002(c) of Pub. L. 100-203, set out as a note under section 3121 of Title 26.

Amendment by section 9003(a)(1) of Pub. L. 100-203 applicable with respect to group-term life insurance coverage in effect after Dec. 31, 1987, with exception for employer's group-term life insurance payments for certain former employees, see section 9003(b) of Pub. L. 100-203, as amended, set out as a note under section 3121 of Title 26.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 122(e)(5) 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 Title 26, Internal Revenue Code.

Amendment by section 1151(d)(2)(C) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1983, see section 1151(k)(5) of Pub. L. 99-514, set out as a note under section 79 of Title 26.

Pub. L. 99-272, title XII, §12112(c), Apr. 7, 1986, 100 Stat. 288, provided that: "The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall be effective with respect to service performed after December 31, 1983."

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(39) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 62 of Title 26, Internal Revenue Code.

Amendment by section 531(d)(1)(B) of Pub. L. 98-369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98-369, set out as an Effective Date note under section 132 of Title 26.

Amendment by section 2661(i) of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(6) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 101(c)(1) of Pub. L. 98-21 effective with respect to services performed after Dec. 31, 1983, see section 101(d) of Pub. L. 98-21, as amended, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 324(c)(1)-(3) of Pub. L. 98-21 applicable to remuneration paid after Dec. 31, 1983, except for certain employer contributions made during 1984 under a qualified cash or deferred arrangement, and except in the case of an agreement with certain nonqualified deferred compensation plans in existence on Mar. 24, 1983, see section 324(d) of Pub. L. 98-21, set out as a note under section 3121 of Title 26.

Amendment by section 327(a)(2) of Pub. L. 98-21 applicable to remuneration paid after Dec. 31, 1983, see section 327(d)(1) of Pub. L. 98-21, as amended, set out as a note under section 3121 of Title 26.

Amendment by section 327(b)(2) of Pub. L. 98-21 applicable to remuneration (other than amounts excluded under 26 U.S.C. 119) paid after Mar. 4, 1983, and to any such remuneration paid on or before such date which the employer treated as wages when paid, see section 327(d)(2) of Pub. L. 98-21, as amended, set out as a note under section 3121 of Title 26.

Amendment by section 328(b) of Pub. L. 98-21 applicable to remuneration paid after Dec. 31, 1983, see section

328(d)(1) of Pub. L. 98-21, set out as a note under section 3121 of Title 26.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-123 applicable, except as otherwise provided, to remuneration paid after Dec. 31, 1981, see section 3(g) of Pub. L. 97-123, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 97-34 applicable to remuneration paid after Dec. 31, 1981, see section 124(f) of Pub. L. 97-34, set out as a note under section 21 of Title 26.

#### EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96-499, see section 1141(c) of Pub. L. 96-499, set out as a note under section 3121 of Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable with respect to taxable years beginning after Dec. 31, 1978, see section 164(d) of Pub. L. 95-600, set out as an Effective Date note under section 127 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 95-472 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 3(d) of Pub. L. 95-472, set out as a note under section 3121 of Title 26.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-216, title III, §351(d), Dec. 20, 1977, 91 Stat. 1551, provided that: "The amendments made by subsection (a) [amending this section and section 410 of this title] shall apply with respect to remuneration paid and services rendered after December 31, 1977. The amendments made by subsections (b) and (c) [amending sections 412 and 413 of this title] shall be effective January 1, 1978."

#### EFFECTIVE DATE OF 1973 AMENDMENT

Pub. L. 93-233, §5(e), Dec. 31, 1973, 87 Stat. 954, provided that: "The amendments made by this section [amending this section and sections 411, 413, and 430 of this title and sections 3121, 3122, 3125, 6413, and 6654 of Title 26, Internal Revenue Code], except subsection (a)(4), shall apply only with respect to remuneration paid after, and taxable years beginning after, 1973. The amendments made by subsection (a)(4) [amending section 415 of this title] shall apply with respect to calendar years after 1973."

Pub. L. 93-66, title II, §203(e), July 9, 1973, 87 Stat. 153, provided that: "The amendments made by this section [amending this section and sections 411, 415, and 430 of this title and sections 3121, 3122, 3125, 6413, and 6654 of Title 26] except subsection (a)(4), shall apply only with respect to remuneration paid after, and taxable years beginning after, 1973. The amendments made by subsection (a)(4) [amending section 415 of this title] shall apply with respect to calendar years after 1973."

#### EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 104(g) of Pub. L. 92-603 applicable only with respect to payments after 1974, see section 104(j) of Pub. L. 92-603, set out as a note under section 414 of this title.

Pub. L. 92-603, title I, §122(c), Oct. 30, 1972, 86 Stat. 1354, provided that: "The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply in the case of any payment made after December 1972."

Pub. L. 92-603, title I, §138(c), Oct. 30, 1972, 86 Stat. 1366, provided that: "The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply in the case of any payment made after December 1972."

Pub. L. 92-336, title II, §203(c), July 1, 1972, 86 Stat. 420, provided that: "The amendments made by subsections (a)(1) and (a)(3)(A) [amending this section and section 413 of this title], and the amendments made by

subsection (b) [amending sections 3121, 3122, 3125, and 6413 of Title 26, Internal Revenue Code] (except paragraphs (1) and (7) thereof), shall apply only with respect to remuneration paid after December 1972. The amendments made by subsections (a)(2), (a)(3)(B), (b)(1), and (b)(7) [amending sections 411 and 413 of this title and sections 1402 and 6654 of Title 26] shall apply only with respect to taxable years beginning after 1972. The amendment made by subsection (a)(4) [amending section 415 of this title] shall apply only with respect to calendar years after 1972.”

#### EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 92-5, title II, §203(c), Mar. 17, 1971, 85 Stat. 11, provided that: “The amendments made by subsections (a)(1) and (a)(3)(A) [amending this section and section 413 of this title], and the amendments made by subsection (b) (except paragraphs (1) and (7) thereof) [amending sections 3121, 3122, 3125, and 6413 of Title 26, Internal Revenue Code], shall apply only with respect to remuneration paid after December 1971. The amendments made by subsections (a)(2), (a)(3)(B), (b)(1), and (b)(7) [amending sections 411 and 413 of this title and sections 1402 and 6654 of Title 26] shall apply only with respect to taxable years beginning after 1971. The amendment made by subsection (a)(4) [amending section 415 of this title] shall apply only with respect to calendar years after 1971.”

#### EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90-248, title I, §108(c), Jan. 2, 1968, 81 Stat. 835, provided that: “The amendment made by subsections (a)(1) and (a)(3)(A) [amending this section and section 423 of this title], and the amendments made by subsection (b) (except paragraph (1) thereof) [amending sections 1402, 3121, 3122, 3125, and 6413 of Title 26, Internal Revenue Code], shall apply only with respect to remuneration paid after December 1967. The amendments made by subsections (a)(2), (a)(3)(B), and (b)(1) [amending sections 411 and 413 of this title and section 1402 of Title 26] shall apply only with respect to taxable years ending after 1967. The amendment made by subsection (a)(4) [amending section 415 of this title] shall apply only with respect to calendar years after 1967.”

Amendment by section 504(c) of Pub. L. 90-248 applicable with respect to remuneration paid after Jan. 2, 1968, see section 504(d) of Pub. L. 90-248, set out as a note under section 3121 of Title 26.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 313(a) of Pub. L. 89-97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89-97, set out as an Effective Date note under section 6053 of Title 26, Internal Revenue Code.

Amendment by section 320(a)(1) of Pub. L. 89-97 applicable with respect to remuneration paid after December 1965, see section 320(c) of Pub. L. 89-97, set out as a note under section 3121 of Title 26.

#### EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-650 applicable with respect to remuneration paid on or after the first day of the first calendar month which begins more than ten days after Oct. 13, 1964, see section 4(d) of Pub. L. 88-650, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 88-272 applicable to remuneration paid after Dec. 31, 1962, see section 220(d) of Pub. L. 88-272, set out as an Effective Date note under section 406 of Title 26.

#### EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-293 applicable with respect to service performed after Sept. 22, 1961, but in the case of persons serving under the Peace Corps agency established by executive order applicable with respect to service performed on or after the effective date of enrollment, see section 202(c) of Pub. L. 87-293, set out as

a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 87-64 applicable with respect to monthly benefits for months beginning on or after August 1, 1961, based on applications filed in or after March 1961, and with respect to lump-sum death payments under this subchapter in the case of deaths on or after August 1, 1961, see sections 102(f) and 109 of Pub. L. 87-64, set out as 1961 Increase in Monthly Benefits; Effective Date, and Effective Date of 1961 Amendment notes, respectively, under section 402 of this title.

#### EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-778 effective Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86-778, set out as a note under section 402 of this title.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85-786, §2, Aug. 27, 1958, 72 Stat. 938, provided that: “The amendment made by section 1 [amending this section] shall be applicable to remuneration paid after the enactment of this Act [Aug. 27, 1958], except that, in the case of any coverage group which is included under the agreement of a State under section 218 of the Social Security Act [42 U.S.C. 418], the amendment made by section 1 shall also be applicable to remuneration for any member of such coverage group with respect to services performed after the effective date, specified in such agreement, for such coverage group, if such State has paid or agrees, prior to January 1, 1959, to pay, prior to such date, the amounts which under section 218(e) [42 U.S.C. 418(e)] would have been payable with respect to remuneration of all members of such coverage group had the amendment made by section 1 been in effect on and after January 1, 1951. Failure by a State to make such payments prior to January 1, 1959, shall be treated the same as failure to make payments when due under section 218(e).”

#### EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, ch. 837, effective Jan. 1, 1957, see act Aug. 1, 1956, ch. 837, title VI, §603(a), 70 Stat. 887.

Act Aug. 1, 1956, ch. 836, title I, §105(d), 70 Stat. 828, provided that: “The amendment made by subsection (a) of this section [amending this section] shall apply with respect to remuneration paid after 1956, and the amendment made by subsection (b) of this section [amending section 410 of this title] shall apply with respect to service performed after 1956.”

#### EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 101(a)(1)-(3) of act Sept. 1, 1954, applicable only with respect to remuneration paid after 1954, see section 101(m) of act Sept. 1, 1954, set out as a note under section 405 of this title.

#### EFFECTIVE DATE OF 1950 AMENDMENT

Act Aug. 28, 1950, ch. 809, title I, §104(b), 64 Stat. 512, provided that: “The amendment made by subsection (a) [amending this section] shall take effect January 1, 1951, except that sections 214, 215, and 216 of the Social Security Act [42 U.S.C. 414, 415, 416] shall be applicable (1) in the case of monthly benefits for months after August 1950, and (2) in the case of lump-sum death payments with respect to deaths after August 1950.”

#### EFFECTIVE DATE OF 1948 AMENDMENT

Act Apr. 20, 1948, ch. 222, §1(b), 62 Stat. 195, provided in part that: “The amendment made by subsection (a) [amending this section] shall be applicable with respect to services performed after the date of the enactment of this Act [Apr. 20, 1948].”

#### EFFECTIVE DATE OF 1946 AMENDMENT

Act Aug. 10, 1946, ch. 951, title IV, §§407(b), 408(b), 409(b), 60 Stat. 988, each provided that: “The amendment made by subsection (a) of this section [amending

this section] shall be applicable only in cases of applications for benefits under this title [this subchapter] filed after December 31, 1946.”

#### EFFECTIVE DATE OF 1945 AMENDMENT

Act Dec. 29, 1945, ch. 652, title I, §5(a), 59 Stat. 671, provided that the amendment made by that section is effective Jan. 1, 1946.

#### EFFECTIVE DATE OF 1939 AMENDMENT

Act Aug. 10, 1939, ch. 666, title II, §201, 53 Stat. 1362, provided that the amendment made by that section is effective Jan. 1, 1940.

#### REPEALS: AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Pub. L. 87-293, title II, §202(b)(2), Sept. 22, 1961, 75 Stat. 626, cited as a credit to this section, was repealed by Pub. L. 89-572, §5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89-572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

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

For purposes of this subchapter, the term “wages” shall not include the amount of any refund required under section 421 of Pub. L. 100-360 [42 U.S.C. 1395b note], see section 10202 of Pub. L. 101-239, set out as a note under section 1395b of this title.

#### NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99-514; MONIES APPROPRIATED FOR FISCAL YEAR 1990 NOT TO BE USED FOR ENFORCEMENT OR IMPLEMENTATION OF AMENDMENT

No monies appropriated by Pub. L. 101-136 to be used to implement or enforce section 1151 of Pub. L. 99-514 or the amendments made by such section, see section 528 of Pub. L. 101-136, set out as a note under section 89 of Title 26, Internal Revenue Code.

#### SOCIAL SECURITY COVERAGE OF RETIRED FEDERAL JUDGES ON ACTIVE DUTY

Notwithstanding section 101(d) of Pub. L. 98-21, set out as an Effective Date of 1983 Amendment note above, the amendment of this section by section 101(c)(1) of Pub. L. 98-21 is applicable only with respect to remuneration paid after Dec. 31, 1985, with remuneration paid prior to Jan. 1, 1986, under section 371(b) of Title 28, Judiciary and Judicial Procedure, to an individual performing service under section 294 of Title 28 not to be included in the term “wages” for purposes of this section or section 3121(a) of Title 26, Internal Revenue Code, see section 4 of Pub. L. 98-118, set out as a note under section 3121 of Title 26.

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

For purposes of applying this section with respect to the parenthetical matter contained in subsec. (b)(2) 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 Title 26, Internal Revenue Code.

#### SERVICES FOR COOPERATIVES PRIOR TO 1951

Act Aug. 28, 1950, ch. 809, title I, §110, 64 Stat. 523, provided that: “In any case in which—

“(1) an individual has been employed at any time prior to 1951 by organizations enumerated in the first

sentence of section 101(12) of the Internal Revenue Code [1939].

“(2) the service performed by such individual during the time he was so employed constituted agricultural labor as defined in section 209(l) of the Social Security Act [former subsec. (l) of this section] and section 1426(h) of the Internal Revenue Code [1939], as in effect prior to the enactment of this Act [Aug. 28, 1950], and such service would, but for the provisions of such sections, have constituted employment for the purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.] and subchapter A of chapter 9 of such Code [1939].

“(3) the taxes imposed by sections 1400 and 1410 of the Internal Revenue Code [1939] have been paid with respect to any part of the remuneration paid to such individual by such organization for such service and the payment of such taxes by such organization has been made in good faith upon the assumption that such service did not constitute agricultural labor as so defined, and

“(4) no refund of such taxes has been obtained, the amount of such remuneration with respect to which such taxes have been paid shall be deemed to constitute remuneration for employment as defined in section 209(b) of the Social Security Act [former subsec. (b) of this section] as in effect prior to the enactment of this Act [Aug. 28, 1950] (but it shall not constitute wages for purposes of deductions under section 203 of such Act [42 U.S.C. 403] for months for which benefits under title II of such Act [42 U.S.C. 401 et seq.] have been certified and paid prior to the enactment of this act.”

#### REFUNDS OR CREDITS FOR OVERPAYMENTS

Act Apr. 20, 1948, ch. 222, §3, 62 Stat. 195, provided that: “If any amount paid prior to the date of the enactment of this Act [Apr. 20, 1948] constitutes an overpayment of tax solely by reason of an amendment made by this Act [amending this section], no refund or credit shall be made or allowed with respect to the amount of such overpayment.”

### § 410. Definitions relating to employment

For the purposes of this subchapter—

#### (a) Employment

The term “employment” means any service performed after 1936 and prior to 1951 which was employment for the purposes of this subchapter under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950 (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee (i) of an American employer (as defined in subsection (e) of this section), or (ii) of a foreign affiliate (as defined in section 3121(l)(6) of the Internal Revenue Code of 1986) of an American employer during any period for which there is in effect an agreement, entered into pursuant to section 3121(l) of such Code, with respect to such affiliate, or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equiva-