

courts shall not be held exclusive of any jurisdiction otherwise possessed by such courts to entertain civil actions, whether legal or equitable in nature, in aid of the enforcement of rights or obligations arising under the provisions of this chapter. (Aug. 16, 1954, ch. 736, 68A Stat. 437.)

#### § 3233. Short title.

This chapter may be cited as the "Railroad Retirement Tax Act." (Aug. 16, 1954, ch. 736, 68A Stat. 438.)

### Chapter 23.—FEDERAL UNEMPLOYMENT TAX ACT

#### Sec.

- 3301. Rate of tax.
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#### AMENDMENTS

1960—Pub. L. 86-778, title V, § 531(d)(2), Sept. 13, 1960, 74 Stat. 984, added item 3308 and redesignated former item 3308 as 3309.

#### § 3301. Rate of tax.

There is hereby imposed on every employer (as defined in section 3306(a)) for the calendar year 1961 and for each calendar year thereafter an excise tax, with respect to having individuals in his employ, equal to 3.1 percent of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)) after December 31, 1938. In the case of wages paid during the calendar year 1962, the rate of such tax shall be 3.5 percent in lieu of 3.1 percent. In the case of wages paid during the calendar year 1963, the rate of such tax shall be 3.35 percent in lieu of 3.1 percent. (Aug. 16, 1954, ch. 735, 68A Stat. 439; Sept. 13, 1960, Pub. L. 86-778, title V, § 523(a), 74 Stat. 980; Mar. 24, 1961, Pub. L. 87-6, § 14(a), 75 Stat. 16; May 29, 1963, Pub. L. 88-31, § 2(a), 77 Stat. 51.)

#### AMENDMENTS

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."

#### EFFECTIVE DATE OF 1960 AMENDMENT

Section 523(c) of Pub. L. 86-778 provided that: "The amendments made by subsection (a) [to this section] shall apply only with respect to the calendar year 1961 and calendar years thereafter."

#### CROSS REFERENCES

Amount and method of adjustment inapplicable to taxes under this chapter, see section 1314 (e) of this title.

Collection of tax on services made necessary by hurricane, see note set out under section 3111 of this title.

Effective date of this subtitle, see section 7851 (a) (3) of this title.

Election of installment payments of tax, see section 6152 (a) (3) of this title.

Penalty for fraud against Social Security Act, see section 1307 of Title 42, The Public Health and Welfare.

Priority of debts due to United States, see section 191 of Title 31, Money and Finance.

Publicity of unemployment tax returns, see section 6106 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 for the taxable year as provided in section 3304.

(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.

##### (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 for the taxable year as provided in section 3303 (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 the taxable year to any person having individuals in his employ, or to a rate of 2.7 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 before the date of the enactment of the Employment Security Act of 1960, 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) In the case of a taxable year beginning on January 1, 1963 (and in the case of any succeeding taxable year beginning before January 1, 1968), 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

(B) In the case of any succeeding taxable year beginning on or after January 1, 1968, 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.

At the request (made before November 1 of the taxable year) of the Governor of any State, the Secretary of Labor shall, as soon as practicable after June 30 or (if later) the date of the receipt of such request, certify to such Governor and to the Secretary of the Treasury the amount he estimates equals .15 percent (plus an additional .15 percent for each additional 5-percent reduction, provided by subparagraph (B)) of the total of the remuneration which would have been subject to contributions under the State unemployment compensation law with respect to the calendar year preceding such certification if the dollar limit on remuneration subject to contributions under such law were equal to the dollar limit under section 3306(b)(1) for such calendar year. If, after receiving such certification and before November 10 of the taxable year, the State pays into the Federal unemployment account the amount so certified (and designates such payment as being made for purposes of this sentence), the reduction provided by the first sentence of this paragraph shall not apply for such taxable year.

(3) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act on or after the date of the enactment of the Employment Security Act of 1960, then the total credits (after applying subsections (a) and (b) and paragraphs (1) and (2) 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 10 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 10 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) by which—

(i) 2.7 percent, 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.

**(d) Definitions and special rules relating to subsection (c).****(1) Rate of tax deemed to be 3 percent.**

In applying subsection (c), the tax imposed by section 3301 shall be computed at the rate of 3 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 or his delegate) to be attributable to such State.

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

Paragraph (2) or (3) 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) (3), 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) 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) (3), 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) (3), 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) (3) 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) (3) (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.

**(8) Cross reference.**

For reduction of total credits allowable under subsection (c), see section 104 of the Temporary Unemployment Compensation Act of 1958.

**(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). (Aug. 16, 1954, ch. 736, 68A Stat. 439; Sept. 13, 1960, Pub. L. 86-778, title V, § 523(b), 74 Stat. 980; Mar. 24, 1961, Pub. L. 87-6, § 14(b), 75 Stat. 16; Sept. 26, 1961, Pub. L. 87-321, § 1(a), 75 Stat. 683; May 29, 1963, Pub. L. 88-31, § 2(b), 77 Stat. 51; Nov. 7, 1963, Pub. L. 88-173, § 1(a)—(c), 77 Stat. 305.)

**REFERENCES IN TEXT**

Title XII of the Social Security Act, referred to in subsec. (c), is classified to sections 1321—1324 of Title 42, The Public Health and Welfare.

The date of the enactment of the Employment Security Act of 1960, referred to in subsec. (c), means the date of the enactment of title V of Pub. L. 86-778, which was approved on Sept. 13, 1960.

Section 104 of the Temporary Unemployment Compensation Act of 1958, referred to in subsec. (d) (8), is classified to section 1400c of Title 42, The Public Health and Welfare.

**AMENDMENTS**

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 added 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 eliminated 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).

**EFFECTIVE DATE OF 1963 AMENDMENT**

Section 1(d) of Pub. L. 88-173 provided that: "The amendments made by subsections (a), (b), and (c) of this section [to subsec. (c) (2) of this section] shall apply only with respect to taxable years beginning on or after January 1, 1963."

**EFFECTIVE DATE OF 1961 AMENDMENT**

Section 1(b) of Pub. L. 87-321 provided that: "The amendment made by subsection (a) [adding subsec. (e)]

to this section] shall apply with respect to the calendar year 1961 and each calendar year thereafter."

**§ 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.

For any person (or group of persons) who has (or have) not been subject to the State law for a period of time sufficient to compute the reduced rates permitted by paragraphs (1), (2), and (3) of this subsection on a 3-year basis, the period of time required may be reduced to the amount of time the person (or group of persons) has (or have) had experience under or has (or have) been subject to the State law, whichever is appropriate, but in no case less than 1 year immediately preceding the computation date.

**(b) Certification by the Secretary of Labor with respect to additional credit allowance.**

(1) On December 31 in each taxable year, the Secretary of Labor shall certify to the Secretary

the law of each State (certified with respect to such year by the Secretary of Labor as provided in section 3304) with respect to which he finds that reduced rates of contributions were allowable with respect to such taxable year only in accordance with the provisions of subsection (a).

(2) If the Secretary of Labor finds that under the law of a single State (certified by the Secretary of Labor as provided in section 3304) more than one type of fund or account is maintained, and reduced rates of contributions to more than one type of fund or account were allowable with respect to any taxable year, and one or more of such reduced rates were allowable under conditions not fulfilling the requirements of subsection (a), the Secretary of Labor shall, on December 31 of such taxable year, certify to the Secretary only those provisions of the State law pursuant to which reduced rates of contributions were allowable with respect to such taxable year under conditions fulfilling the requirements of subsection (a), and shall, in connection therewith, designate the kind of fund or account, as defined in subsection (c), established by the provisions so certified. If the Secretary of Labor finds that a part of any reduced rate of contributions payable under such law or under such provisions is required to be paid into one fund or account and a part into another fund or account, the Secretary of Labor shall make such certification pursuant to this paragraph as he finds will assure the allowance of additional credits only with respect to that part of the reduced rate of contributions which is allowed under provisions which do fulfill the requirements of subsection (a).

(3) The Secretary of Labor shall, within 30 days after any State law is submitted to him for such purpose, certify to the State agency his findings with respect to reduced rates of contributions to a type of fund or account, as defined in subsection (c), which are allowable under such State law only in accordance with the provisions of subsection (a). After making such findings, the Secretary of Labor shall not withhold his certification to the Secretary of such State law, or of the provisions thereof with respect to which such findings were made, for any taxable year pursuant to paragraph (1) or (2) unless, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds the State law no longer contains the provisions specified in subsection (a) or the State has, with respect to such taxable year, failed to comply substantially with any such provision.

**(c) Definitions.**

As used in this section—

**(1) Reserve account.**

The term "reserve account" means a separate account in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ, from which account, unless such account is exhausted, is paid all and only compensation payable on the basis of services performed for such person (or for one or more of the persons comprising the group).

**(2) Pooled fund.**

The term "pooled fund" means an unemployment fund or any part thereof (other than a reserve account or a guaranteed employment account) into which the total contributions of persons contributing thereto are payable, in which all contributions are mingled and undivided, and from which compensation is payable to all individuals eligible for compensation from such fund.

**(3) Partially pooled account.**

The term "partially pooled account" means a part of an unemployment fund in which part of the fund all contributions thereto are mingled and undivided, and from which part of the fund compensation is payable only to individuals to whom compensation would be payable from a reserve account or from a guaranteed employment account but for the exhaustion or termination of such reserve account or of such guaranteed employment account. Payments from a reserve account or guaranteed employment account into a partially pooled account shall not be construed to be inconsistent with the provisions of paragraph (1) or (4).

**(4) Guaranteed employment account.**

The term "guaranteed employment account" means a separate account, in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ who, in accordance with the provisions of the State law or of a plan thereunder approved by the State agency,

(A) guarantees in advance at least 30 hours of work, for which remuneration will be paid at not less than stated rates, for each of 40 weeks (or if more, 1 weekly hour may be deducted for each added week guaranteed) in a year, to all the individuals who are in his (or their) employ in, and who continue to be available for suitable work in, one or more distinct establishments, except that any such individual's guaranty may commence after a probationary period (included within the 11 or less consecutive weeks immediately following the first week in which the individual renders services), and

(B) gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties, from which account, unless such account is exhausted or terminated, is paid all and only compensation, payable on the basis of services performed for such person (or for one or more of the persons comprising the group), to any such individual whose guaranteed remuneration has not been paid (either pursuant to the guaranty or from the security or assurance provided for the fulfillment of the guaranty), or whose guaranty is not renewed and who is otherwise eligible for compensation under the State law.

**(5) Year.**

The term "year" means any 12 consecutive calendar months.

**(6) Balance.**

The term "balance", with respect to a reserve account or a guaranteed employment account, means the amount standing to the credit of the account as of the computation date; except that, if subsequent to January 1, 1940, any moneys have been paid into or credited to such account other than payments thereto by persons having individuals in their employ, such term shall mean the amount in such account as of the computation date less the total of such other moneys paid into or credited to such account subsequent to January 1, 1940.

**(7) Computation date.**

The term "computation date" means the date, occurring at least once in each calendar year and within 27 weeks prior to the effective date of new rates of contributions, as of which such rates are computed.

**(8) Reduced rate.**

The term "reduced rate" means a rate of contributions lower than the standard rate applicable under the State law, and the term "standard rate" means the rate on the basis of which variations therefrom are computed.

**(d) Voluntary contributions.**

A State law may, without being deemed to violate the standards set forth in subsection (a), permit voluntary contributions to be used in the computation of reduced rates if such contributions are paid prior to the expiration of 120 days after the beginning of the year for which such rates are effective. (Aug. 16, 1954, ch. 736, 68A Stat. 440; Sept. 1, 1954, ch. 1212, § 2, 68 Stat. 1130.)

**AMENDMENTS**

1954—Subsec. (a). Act Sept. 1, 1954, added par. relating to reduced rates for new employers.

**EFFECTIVE DATE OF 1954 AMENDMENT**

Section 2 of act Sept. 1, 1954, provided in part that the amendment of subsec. (a) shall take effect after Dec. 31, 1954.

**§ 3304. Approval of State laws.****(a) Requirements.**

The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that—

(1) all compensation is to be paid through public employment offices or such other agencies as the Secretary of Labor may approve;

(2) no compensation shall be payable with respect to any day of unemployment occurring within 2 years after the first day of the first period with respect to which contributions are required;

(3) all money received in the unemployment fund shall (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305 (b)) immediately upon such receipt be paid over to the Secretary to the credit of the Unemployment Trust Fund established by section 904 of the Social Security Act (49 Stat. 640; 52 Stat. 1104, 1105; 42 U. S. C. 1104);

(4) all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, ex-

clusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305 (b); except that—

(A) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration; and

(B) the amounts specified by section 903 (c) (2) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices;

(5) compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6) all the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

**(b) Notification.**

The Secretary of Labor shall, upon approving such law, notify the governor of the State of his approval.

**(c) Certification.**

On December 31 of each taxable year the Secretary of Labor shall certify to the Secretary each State whose law he has previously approved, except that he shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has amended its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision and such finding has become effective. Such finding shall become effective on the 90th day after the governor of the State has been notified thereof, unless the State has before such 90th day so amended its law that it will comply substantially with the Secretary of Labor's interpretation of the provision of subsection (a), in which event such finding shall not become effective. No finding of a failure to comply substantially with the provision in State law specified in paragraph (5) of subsection (a) shall be based on an application or interpretation of State law with respect to which further administrative or judicial review is provided for under the laws of the State.

**(d) Notice of noncertification.**

If, at any time during the taxable year, the Secretary of Labor has reason to believe that a State

whose law he has previously approved may not be certified under subsection (c), he shall promptly so notify the governor of such State. (Aug. 16, 1954, ch. 736, 68A Stat. 443.)

**REFERENCES IN TEXT**

Section 903(c) (2) of the Social Security Act, referred to in subsec. (a) (4) (B), is classified to section 1103(c) (2) of Title 42, The Public Health and Welfare.

**UNEMPLOYMENT COMPENSATION LAW OF COMMONWEALTH OF PUERTO RICO**

Section 543(b) of Pub. L. 86-778, title V, Sept. 13, 1960, 74 Stat. 986, provided that:

"The unemployment compensation law of the Commonwealth of Puerto Rico shall be considered as meeting the requirements of—

"(1) Section 3304(a) (2) of the Federal Unemployment Tax Act [subsec. (a) (2) of this section], if such law provides that no compensation is payable with respect to any day of unemployment occurring before January 1, 1959.

"(2) Section 3304(a) (3) of the Federal Unemployment Tax Act [subsec. (a) (3) of this section] and section 303(a) (4) of the Social Security Act [section 503(a) (4) of Title 42], if such law contains the provisions required by those sections and if it requires that, on or before February 1, 1961, there be paid over to the Secretary of the Treasury, for credit to the Puerto Rico account in the Unemployment Trust Fund, an amount equal to the excess of—

"(A) the aggregate of the moneys received in the Puerto Rico unemployment fund before January 1, 1961, over

"(B) the aggregate of the moneys paid from such fund before January 1, 1961, as unemployment compensation or as refunds of contributions erroneously paid."

**CROSS REFERENCES**

Withdrawal as breach of conditions, see note set out under section 363 of Title 45, Railroads.

**§ 3305. Applicability of State law.**

**(a) Interstate and foreign commerce.**

No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce.

**(b) Federal instrumentalities in general.**

The legislature of any State may require any instrumentality of the United States (other than an instrumentality to which section 3306(c) (6) applies), and the individuals in its employ, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 and (except as provided in section 5240 of the Revised Statutes, as amended (12 U.S.C., sec. 484), and as modified by subsection (c)), to comply otherwise with such law. The permission granted in this subsection shall apply (A) only to the extent that no discrimination is made against such instrumentality, so that if the rate of contribution is uniform upon all other persons subject to such law on account of having individuals in their employ, and upon all employees of such persons, respectively, the contributions required of such instrumentality or the individuals in its employ shall not be at a greater rate than is required of such other persons and such employees, and if the rates are determined

separately for different persons or classes of persons having individuals in their employ or for different classes of employees, the determination shall be based solely upon unemployment experience and other factors bearing a direct relation to unemployment risk; (B) only if such State law makes provision for the refund of any contributions required under such law from an instrumentality of the United States or its employees for any year in the event such State is not certified by the Secretary of Labor under section 3304 with respect to such year; and (C) only if such State law makes provision for the payment of unemployment compensation to any employee of any such instrumentality of the United States in the same amount, on the same terms, and subject to the same conditions as unemployment compensation is payable to employees of other employers under the State unemployment compensation law.

(c) National banks.

Nothing contained in section 5240 of the Revised Statutes, as amended (12 U. S. C. 484), shall prevent any State from requiring any national banking association to render returns and reports relative to the association's employees, their remuneration and services, to the same extent that other persons are required to render like returns and reports under a State law requiring contributions to an unemployment fund. The Comptroller of the Currency shall, upon receipt of a copy of any such return or report of a national banking association from, and upon request of, any duly authorized official, body, or commission of a State, cause an examination of the correctness of such return or report to be made at the time of the next succeeding examination of such association, and shall thereupon transmit to such official, body, or commission a complete statement of his findings respecting the accuracy of such returns or reports.

(d) Federal property.

No person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or possessed by the United States.

(e) Repealed. Sept. 1, 1954, ch. 1212, § 4 (c), 68 Stat. 1135.

(f) American vessels.

The legislature of any State in which a person maintains the operating office, from which the operations of an American vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed and controlled, may require such person and the officers and members of the crew of such vessel to make contributions to its unemployment fund under its State unemployment compensation law approved by the Secretary of Labor under section 3304 and otherwise to comply with its unemployment compensation law with respect to the service performed by an officer or member of the

crew on or in connection with such vessel to the same extent and with the same effect as though such service was performed entirely within such State. Such person and the officers and members of the crew of such vessel shall not be required to make contributions, with respect to such service, to the unemployment fund of any other State. The permission granted by this subsection is subject to the condition that such service shall be treated, for purposes of wage credits given employees, like other service subject to such State unemployment compensation law performed for such person in such State, and also subject to the same limitation, with respect to contributions required from such person and from the officers and members of the crew of such vessel, as is imposed by the second sentence (other than clause (B) thereof) of subsection (b) with respect to contributions required from instrumentalities of the United States and from individuals in their employ.

(g) Vessels operated by general agents of United States.

The permission granted by subsection (f) shall apply in the same manner and under the same conditions (including the obligation to comply with all requirements of State unemployment compensation laws) to general agents of the Secretary of Commerce with respect to service performed on or after July 1, 1953, by officers and members of the crew on or in connection with American vessels—

- (1) owned by or bareboat chartered to the United States, and
- (2) whose business is conducted by such general agents.

As to any such vessel, the State permitted to require contributions on account of such service shall be the State to which the general agent would make contributions if the vessel were operated for his own account. Such general agents are designated, for this purpose, instrumentalities of the United States neither wholly nor partially owned by it and shall not be exempt from the tax imposed by section 3301. The permission granted by this subsection is subject to the same conditions and limitations as are imposed in subsection (f), except that clause (B) of the second sentence of subsection (b) shall apply.

(h) Requirement by State of contributions.

Any State may, as to service performed on or after July 1, 1953, and on account of which contributions are made pursuant to subsection (g)—

- (1) require contributions from persons performing such service under its unemployment compensation law or temporary disability insurance law administered in connection therewith, and
- (2) require general agents of the Secretary of Commerce to make contributions under such temporary disability insurance law and to make such deductions from wages or remuneration as are required by such unemployment compensation or temporary disability insurance law.

(i) General agent as legal entity.

Each general agent of the Secretary of Commerce making contributions pursuant to subsection (g) or (h) shall, for purposes of such subsections, be

considered a legal entity in his capacity as an instrumentality of the United States, separate and distinct from his identity as a person employing individuals on his own account. (Aug. 16, 1954, ch. 736, 68A Stat. 445; Sept. 1, 1954, ch. 1212, § 4(c), 68 Stat. 1135; Sept. 13, 1960, Pub. L. 86-778, title V, § 531 (a), (b), 74 Stat. 983.)

#### AMENDMENTS

1960—Subsec. (b). Pub. L. 86-778, § 531(a), substituted "(other than an instrumentality to which section 3306(c) (6) applies)" for "except such as are (1) wholly owned by the United States, or (2) exempt from the tax imposed by section 3301 by virtue of any other provision of law," and added cl. (C).

Subsec. (g). Pub. L. 86-778, § 531(b), substituted "neither wholly nor partially" for "not wholly."

1954—Subsec. (e). Act Sept. 1, 1954, repealed subsec. (e), which related to the Bonneville Power Administrator.

#### EFFECTIVE DATE OF 1960 AMENDMENT

Section 535 of Pub. L. 86-778 provided that: "The amendments made by this part [adding section 3308 of this title, amending subsecs. (b) and (g) of this section and sections 3306(c), 3306(c)(4), (8), (10) and 3306(m) of this title] (other than the amendments made by subsections (e) and (f) of section 531 [to sections 1361(a) and 1367 of title 42]) shall apply with respect to remuneration paid after 1961 for services performed after 1961. The amendments made by subsections (e) and (f) of section 531 shall apply with respect to any week of unemployment which begins after December 31, 1960."

#### EFFECTIVE DATE OF 1954 AMENDMENT

Section 4(c) of act Sept. 1, 1954, provided in part that the repeal of subsec. (e) shall be effective with respect to services performed after Dec. 31, 1954.

#### APPLICABILITY TO FEDERAL LAND BANKS, FEDERAL INTERMEDIATE CREDIT BANKS, AND BANKS FOR COOPERATIVES

Section 531(g) of Pub. L. 86-778 provided that: "Notwithstanding section 203(b) of the Farm Credit Act of 1959 [set out as a note under section 6401 of title 12], sections 3305(b), 3306(c)(6), and 3308 of the Internal Revenue Code of 1954 [subsec. (b) of this section and sections 3306(c)(6) and 3308 of this title], and sections 1501(a) and 1507(a) of the Social Security Act [sections 1361(a) and 1367 of title 42] shall be applicable, according to their terms, to the Federal land banks, Federal intermediate credit banks, and banks for cooperatives."

### § 3306. Definitions.

#### (a) Employer.

For purposes of this chapter, the term "employer" does not include any person unless on each of some 20 days during the taxable year, each day being in a different calendar week, the total number of individuals who were employed by him in employment for some portion of the day (whether or not at the same moment of time) was 4 or more.

#### (b) Wages.

For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to \$3,000 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year.

If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to \$3,000 to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

(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) retirement, or

(B) sickness or accident disability, or

(C) medical or hospitalization expenses in connection with sickness or accident disability, or

(D) death;

(3) 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;

(4) 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 6 calendar months following the last calendar month in which the employee worked for such employer;

(5) any payment made to, or on behalf of, an employee or his beneficiary—

(A) from or to a trust described in section 401 (a) which is exempt from tax under section 501 (a) at the time of such payment 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, is a plan described in section 403 (a), or

(C) under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405 (a);



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

(A) of the tax imposed upon an employee under section 3101 (or the corresponding section of prior law), or

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

(7) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

(8) any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of 65, if he did not work for the employer in the period for which such payment is made; or

(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.

**(c) Employment.**

For purposes of this chapter, the term "employment" means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (A) within the United States, or (B) 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, except—

(1) agricultural labor (as defined in subsection (k));

(2) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(3) service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(A) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or

(B) such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter;

(4) service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States;

(5) service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

(6) service performed in the employ of the United States Government or of an instrumentality of the United States which is—

(A) wholly or partially owned by the United States, or

(B) exempt from the tax imposed by section 3301 by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;

(7) service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 3301;

(8) service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a);

(9) service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act (52 Stat. 1094, 1095; 45 U. S. C. 351);

(10) (A) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521, if the remuneration for such service is less than \$50, or

(B) service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

(11) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) if the Secretary of State shall certify to the Secretary that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the for-

foreign country by employees of the United States Government and of instrumentalities thereof;

(13) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law;

(14) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(15) (A) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(16) service performed in the employ of an international organization;

(17) service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except—

(A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and

(B) service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States); or

(18) Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be.

**(d) Included and excluded service.**

For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such

employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (c) (9).

**(e) State agency.**

For purposes of this chapter, the term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

**(f) Unemployment fund.**

For purposes of this chapter, the term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 904 of the Social Security Act, as amended (49 Stat. 640; 52 Stat. 1104, 1105; 42 U. S. C. 1104), shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in existence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305 (b); except that—

(1) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration; and

(2) the amounts specified by section 903 (c) (2) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices.

**(g) Contributions.**

For purposes of this chapter, the term "contributions" means payments required by a State law to be made into an unemployment fund by any person on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the remuneration of individuals in his employ.

**(h) Compensation.**

For purposes of this chapter, the term "compensation" means cash benefits payable to individuals with respect to their unemployment.

**(i) Employee.**

For purposes of this chapter, the term "employee" includes an officer of a corporation, but such term does not include—

(1) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an independent contractor, or

(2) any individual (except an officer of a corporation) who is not an employee under such common law rules.

**(j) State, United States, and citizen.**

For purposes of this chapter—

**(1) State.**

The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico.

**(2) United States.**

The term "United States" when used in a geographical sense includes the States, the District of Columbia, and the Commonwealth of Puerto Rico.

An individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) shall be considered for purposes of this section, as a citizen of the United States.

**(k) Agricultural labor.**

For purposes of this chapter, the term "agricultural labor" includes all service performed—

(1) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) in connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, § 3; 12 U. S. C. 1141j), or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes; or

(4) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service

is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

**(l) Repealed.** Sept. 1, 1954, ch. 1212, § 4 (c), 68 Stat. 1135.

**(m) American vessel and aircraft.**

For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State; and the term "American aircraft" means an aircraft registered under the laws of the United States.

**(n) Vessels operated by general agents of United States.**

Notwithstanding the provisions of subsection (c) (6), service performed on or after July 1, 1953, by officers and members of the crew of a vessel which would otherwise be included as employment under subsection (c) shall not be excluded by reason of the fact that it is performed on or in connection with an American vessel—

(1) owned by or bareboat chartered to the United States and

(2) whose business is conducted by a general agent of the Secretary of Commerce.

For purposes of this chapter, each such general agent shall be considered a legal entity in his capacity as such general agent, separate and distinct from his identity as a person employing individuals on his own account, and the officers and members of the crew of such an American vessel whose business is conducted by a general agent of the Secretary of Commerce shall be deemed to be performing services for such general agent rather than the United States. Each such general agent who in his capacity as such is an employer within the meaning of subsection (a) shall be subject to all the requirements imposed upon an employer under this chapter with respect to service which constitutes employment by reason of this subsection. (Aug. 16, 1954, ch. 736, 68A Stat. 447; Sept. 1, 1954, ch. 1212, §§ 1, 4(c), 68 Stat. 1130, 1135; June 25, 1959, Pub. L. 86-70, § 22(a), 73 Stat. 146; July 12, 1960, Pub. L. 86-624, § 18(d), 74 Stat. 417; Sept. 13, 1960, Pub. L. 86-778, title V, §§ 531(c), 532-534, 543(a), 74 Stat. 983, 984, 986; Sept. 21, 1961, Pub. L. 87-256, § 110(f), 75 Stat. 537; Oct. 10, 1962, Pub. L. 87-792, § 7(k), 76 Stat. 830; Oct. 13, 1964, Pub. L. 88-650, § 4(c), 78 Stat. 1077.)

## REFERENCES IN TEXT

Section 101(a) (15) of the Immigration and Nationality Act, as amended, referred to in subsec. (c) (18), is classified to section 1101(a) (15) of Title 8, Aliens and Nationality.

Section 903(c) (2) of the Social Security Act, referred to in subsec. (f) (2), is classified to section 1103(c) (2) of Title 42, The Public Health and Welfare.

## AMENDMENTS

1964—Subsec. (b). Pub. L. 88-650 added par. (9).

1962—Subsec. (b) (5). Pub. L. 87-792 substituted "is a plan described in section 403(a)" for "meets the requirements of section 401(a) (3), (4), (5), and (6)" in subpar. (B), and added subpar. (C).

1961—Subsec. (c) (18). Pub. L. 87-256 added subsec. (c) (18).

1960—Subsec. (c). Pub. L. 86-778, § 532(a), included employment on or in connection with an American aircraft within cl. (B) of the opening provisions.

Subsec. (c) (4). Pub. L. 86-778, § 532(b), excluded service performed on or in connection with an aircraft that is not an American aircraft.

Subsec. (c) (6). Pub. L. 86-778, § 531(c), substituted "wholly or partially owned" for "wholly owned" in cl. (A), and inserted words "which specifically refers to such section (or the corresponding section of prior law) in granting such exemption" in cl. (B).

Subsec. (c) (8). Pub. L. 86-778, § 533, substituted "service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c) (3) which is exempt from income tax under section 501(a)" for "service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation."

Subsec. (c) (10). Pub. L. 86-778, § 534, eliminated provisions which excepted from the definition of the term "employment" service in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association which is performed away from the home office or is ritualistic service in connection with any such society, order, or association, service performed in the employ of an agricultural or horticultural organization described in section 501(c) (5) of this title, service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to members or their dependents or designated beneficiaries, and service performed in the employ of a school, college, or university, not exempt from income tax under section 501(a) of this title if such service is performed by a student who is enrolled and regularly attending classes.

Subsec. (j). Pub. L. 86-778, § 543(a), included the Commonwealth of Puerto Rico and eliminated the word "Hawaii" from the definition of "State", defined the term "United States", and inserted provisions requiring an individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) to be considered for purposes of this section, as a citizen of the United States.

Pub. L. 86-624 eliminated "Hawaii, and" preceding "the District of Columbia."

Subsec. (m). Pub. L. 86-778, § 532(c), included aircraft in the catchline and defined the term "American aircraft."

1959—Subsec. (j). Pub. L. 86-70 eliminated "Alaska," preceding "Hawaii."

1954—Subsec. (a). Act Sept. 1, 1954, changed "definition of employer from "eight or more" to "4 or more".

Subsec. (l). Act Sept. 1, 1954, repealed subsec. (l) which related to certain employees of Bonneville Power Administrator.

## EFFECTIVE DATE OF 1964 AMENDMENT

Subsec. (b) (9) of this section 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(c) of Pub. L. 88-650, set out as a note under section 3121 of this title.

## EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87-792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87-792, set out as a note under section 37 of this title.

## EFFECTIVE DATE OF 1961 AMENDMENT

Amendment of section by Pub. L. 87-256 applicable with respect to service performed after Dec. 31, 1961, see section 110(h) (3) of Pub. L. 87-256, set out as a note under section 3121 of this title.

## EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment of subssecs. (c), (c) (4), (6), (8), (10), and (m) of this section by Pub. L. 86-778 applicable with respect to remuneration paid after 1961 for services performed after 1961, see section 535 of Pub. L. 86-778, set out as a note under section 3305 of this title.

Section 543(a) of Pub. L. 86-778 provided in part that the amendment of subsec. (j) of this section by Pub. L. 86-778 shall be effective with respect to remuneration paid after Dec. 31, 1960, for services performed after such date.

Amendment of subsec. (j) by Pub. L. 86-624 effective on August 21, 1959, see section 18(k) of Pub. L. 86-624, set out as a note under section 2202 of this title

## EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86-70 effective Jan. 3, 1959, see section 22(1) of Pub. L. 86-70, set out as a note under section 2202 of this title.

## EFFECTIVE DATE OF 1954 AMENDMENTS

Section 1 of act Sept. 1, 1954, provided in part that the amendment of subsec. (a) shall take effect with respect to services performed after Dec. 31, 1955.

Section 4 (c) of act Sept. 1, 1954, provided in part that the repeal of subsec. (l) shall be effective with respect to services performed after Dec. 31, 1954.

## APPLICABILITY TO FEDERAL LAND BANKS, FEDERAL INTERMEDIATE CREDIT BANKS, AND BANKS FOR COOPERATIVES

Applicability of subsec. (c) (6) of this section to Federal land banks, Federal intermediate credit banks, and banks for cooperatives, see section 531(g) of Pub. L. 86-778, set out as a note under section 3305 of this title.

## § 3307. Deductions as constructive payments.

Whenever under this chapter or any act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction. (Aug. 16, 1954, ch. 736, 68A Stat. 454.)

## § 3308. Instrumentalities of the United States.

Notwithstanding any other provision of law (whether enacted before or after the enactment of this section) which grants to any instrumentality of the United States an exemption from taxation, such instrumentality shall not be exempt from the tax imposed by section 3301 unless such other provision of law grants a specific exemption, by reference to section 3301 (or the corresponding section of prior law), from the tax imposed by such section. (Added Pub. L. 86-778, title V, § 531(d) (1), Sept. 13, 1960, 74 Stat. 983.)

## REFERENCES IN TEXT

Enacted before or after the enactment of this section, referred to in the text, means enacted before or after Sept. 13, 1960, the date of approval of Pub. L. 86-778.

## EFFECTIVE DATE

Section applicable with respect to remuneration paid after 1961 for services performed after 1961, see section 535 of Pub. L. 86-778, set out as a note under section 3305 of this title.

## APPLICABILITY TO FEDERAL LAND BANKS, FEDERAL INTERMEDIATE CREDIT BANKS, AND BANKS FOR COOPERATIVES

Applicability of this section to Federal land banks, Federal intermediate credit banks, and banks for cooperatives, see section 531(g) of Pub. L. 86-778, set out as a note under section 3305 of this title.

## § 3309. Short title.

This chapter may be cited as the "Federal Unemployment Tax Act." (Aug. 16, 1954, ch. 736, § 3309, formerly § 3308, 68A Stat. 454, renumbered Sept. 13, 1960, Pub. L. 86-778, title V, § 531(d)(1), 74 Stat. 983.)

## Chapter 24.—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

## Sec.

3401. Definitions.

3402. Income tax collected at source.

3403. Liability for tax.

3404. Return and payment by governmental employer.

## § 3401. Definitions.

## (a) Wages.

For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid—

(1) for active service as a member of the Armed Forces of the United States performed in a month for which such member is entitled to the benefits of section 112; or

(2) for agricultural labor (as defined in section 3121 (g)); or

(3) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; or

(4) for service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(A) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or

(B) such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter; or

(5) for services by a citizen or resident of the United States for a foreign government or an international organization; or

(6) for services performed by a nonresident alien individual, other than—

(A) a resident of a contiguous country who enters and leaves the United States at frequent intervals; or

(B) a resident of Puerto Rico if such services are performed as an employee of the United States or any agency thereof; or

(C) an individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, if such remuneration is exempt, under section 1441(c)(4)(B), from deduction and withholding under section 1441(a), and is not exempt from taxation under section 872(b)(3), or

(7) for such services, performed by a nonresident alien individual who is a resident of a contiguous country and who enters and leaves the United States at frequent intervals, as may be designated by regulations prescribed by the Secretary or his delegate; or

(8) (A) for services for an employer (other than the United States or any agency thereof)—

(i) performed by a citizen of the United States if, at the time of the payment of such remuneration, it is reasonable to believe that such remuneration will be excluded from gross income under section 911; or

(ii) performed in a foreign country or in a possession of United States by such a citizen if, at the time of the payment of such remuneration, the employer is required by the law of any foreign country or possession of the United States to withhold income tax upon such remuneration; or

(B) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within a possession of the United States (other than Puerto Rico), if it is reasonable to believe that at least 80 percent of the remuneration to be paid to the employee by such employer during the calendar year will be for such services; or

(C) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within Puerto Rico, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of Puerto Rico; or

(9) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(10) (A) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(B) for services performed by an individual in, and at the time of, the sale of newspapers or